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FEDERAL COMMUNICATIONS COMMISSION

*Reed E. Hundt, Chairman
James H. Quello
Andrew C. Barrett
**Ervin S. Duggan

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*Reed E. Hundt designated Charman effective November 29, 1993.
**Ervin S. Duggan resigned January 31, 1994.

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Federal Communications Commission Record

Volume 9
Issue 4

Table of Contents

Table of Cases..... i

Table of FCC and Delegated Authority Numbers..... iii

Table of Docket Numbers..... iv

Table of Rulemakings..... v

Table of Localities..... vi

Table by Subject Matter..... vii

Table by Statutory and Rule Provisions..... ix

Decisions, Reports, Memorandum Opinions, Orders, and Other Selected Material..... 649

Table of Cases
Volume 9
Issue 4

Case Name	Page
800 Data Base Tariffs and 800 Service Tariff	715
Adelphia Communications Corporation	908
Amendment of Part 32 - Financial Accounting	727
American Telephone and Telegraph Company	706
BellSouth Telecommunications, Inc.	697
CBS, Inc.	705
COMSAT Mobile Communications	690
Codification of Political Programming Policies	651
Comsat Corporation	667
Comsat Corporation	707
Comsat Corporation	708
Corporate Satellite Communications, Inc.	712
EMI Communications Corporation	669
Eagle Radio, Inc.	836
Ex Parte Presentations in PR Docket 93-61	733
Expanded Interconnection with Local Telephone Company Facilities	826
Fee Decisions of the Managing Director	767
Florida Public Safety Plan	650
Ginorio, Angel F.	698
Greater Dayton Public Television	702
Hawaii Public Safety Plan	704
Interlink Telecom Co.	710
LEC's Rates, Terms, and Conditions	817
LEC's Rates, Terms, and Conditions	694
Maine Telecommunications Group, Inc.	720
Mississippi Valley Broadcasting, Inc.	700
North County Broadcasting Corporation	871
Orbital Communications Corporations	695
Pacific Gateway Exchange, Inc.	665
PanAmSat, L.P.	668
Prescription of Revised Percentages of Depreciation	734
Roy H. Park Broadcasting of Washington, Inc.	860
San Luis Obispo Limited Partnership	894
Satellite CD Radio, Inc.	696
Standards for Assessing Forfeitures for Violations of EEO Rules	929
Stauffer Communications, Inc.	879
Storer Cable	813
Table of Allotments, FM, Grand Gorge, NY	688
Table of Allotments, FM, Hawaiian Ocean View Estates, HI	673
Table of Allotments, FM, Hazlehurst, MS	663
Table of Allotments, FM, Huntsville, MO and Pella, IA	674
Table of Allotments, FM, Jeffersonville, NY	687
Table of Allotments, FM, Keno, Bonanza, Merrill and Malin, OR	683
Table of Allotments, FM, Marathon and Stevens Point, WI	658

Case Name	Page
Table of Allotments, FM, Menomonie and Balsam Lake, WI	689
Table of Allotments, FM, Norlina, NC	686
Table of Allotments, FM, Oakhurst, Firebaugh and June Lake, CA	653
Table of Allotments, FM, Oakhurst, Firebaugh and June Lake, CA	655
Table of Allotments, FM, Ola, AR	677
Table of Allotments, FM, Olivia and Sauk Rapids, MN	691
Table of Allotments, FM, Pauls Valley, OK	670
Table of Allotments, FM, Silverton, CO	661
Table of Allotments, FM, South Hill, VA	682
Table of Allotments, FM, Templeton, CA	685
Table of Allotments, FM, The Dalles, OR	671
Table of Allotments, FM, Tunica, MS	679
Table of Allotments, FM, Walker, MN	659
Table of Allotments, FM, Westbrook, ME	681
Table of Allotments, FM, Wickenburg and Lake Havasu City, AZ	649
Table of Allotments, TV, Eagle River, WI	675
Telephone and Data Systems, Inc.	938
The Lutheran Church/Missouri Synod	914
Transport Rate Structure and Pricing Requirements	796
US West Communications, Inc.	721
Washington, D.C. Metropolitan Area Public Safety Plan	703

Table of Cases by Delegated Authority and FCC Number

Volume 9
Issue 4

Delegated Authority or FCC Number	Page
DA 93 -1524	796
DA 93 -1603	702
DA 94 - 28	649
DA 94 - 43	653
DA 94 - 48	655
DA 94 - 54	721
DA 94 - 56	658
DA 94 - 57	659
DA 94 - 58	661
DA 94 - 59	663
DA 94 - 63	691
DA 94 - 71	673
DA 94 - 72	674
DA 94 - 74	650
DA 94 - 78	670
DA 94 - 79	671
DA 94 - 82	813
DA 94 - 84	675
DA 94 - 90	690
DA 94 - 95	677
DA 94 - 96	679
DA 94 - 97	681
DA 94 - 99	715
DA 94 - 100	689
DA 94 - 101	688
DA 94 - 102	687
DA 94 - 103	686
DA 94 - 104	685
DA 94 - 105	683
DA 94 - 107	665
DA 94 - 108	667
DA 94 - 109	668
DA 94 - 110	695
DA 94 - 111	669
DA 94 - 112	720
DA 94 - 114	682
DA 94 - 123	694
DA 94 - 125	697
DA 94 - 126	767
DA 94 - 128	696
DA 94 - 129	733
DA 94 - 131	703
DA 94 - 132	704
DA 94 - 134	698
DA 94 - 135	700
DA 94 - 136	706
DA 94 - 137	707
DA 94 - 138	708
DA 94 - 139	710
DA 94 - 140	712
DA 94 - 141	705
DA 94 - 142	817
DA 94 - 143	826
FCC 94 - 1	651
FCC 94 - 13	734
FCC 94 - 17	836
FCC 94 - 18	860
FCC 94 - 19	871
FCC 94 - 20	879
FCC 94 - 21	894
FCC 94 - 22	908
FCC 94 - 23	914
FCC 94 - 27	929
FCC 94 - 28	727
FCC 94 - 29	938

Table of Cases by Docket Number
Volume 9
Issue 4

Docket Number				Page
CC	Dkt.No.89	-	360	727
CC	Dkt.No.91	-	141	826
CC	Dkt.No.93	-	129	715
CC	Dkt.No.93	-	162	694
CC	Dkt.No.94	-	11	938
GEN	Dkt.No.90	-	7	703
GEN	Dkt.No.90	-	119	650
MM	Dkt.No.90	-	468	649
MM	Dkt.No.91	-	168	651
MM	Dkt.No.93	-	30	682
MM	Dkt.No.93	-	33	653
MM	Dkt.No.93	-	33	655
MM	Dkt.No.93	-	184	686
MM	Dkt.No.93	-	188	681
MM	Dkt.No.93	-	208	683
MM	Dkt.No.93	-	213	689
MM	Dkt.No.93	-	217	688
MM	Dkt.No.93	-	227	658
MM	Dkt.No.93	-	237	687
MM	Dkt.No.93	-	238	685
MM	Dkt.No.93	-	247	670
MM	Dkt.No.93	-	258	673
MM	Dkt.No.93	-	315	674
MM	Dkt.No.94	-	2	663
MM	Dkt.No.94	-	3	661
MM	Dkt.No.94	-	4	659
MM	Dkt.No.94	-	5	691
MM	Dkt.No.94	-	6	671
MM	Dkt.No.94	-	7	675
MM	Dkt.No.94	-	8	677
MM	Dkt.No.94	-	9	679
MM	Dkt.No.94	-	10	914
PR	Dkt.No.93	-	61	733
PR	Dkt.No.93	-	80	704

Table of Cases by Rulemaking Number
Volume 9
Issue 4

Rulemaking Number	Page
RM - 7214	689
RM - 7380	649
RM - 8160	653
RM - 8160	655
RM - 8171	682
RM - 8233	653
RM - 8233	655
RM - 8253	673
RM - 8277	686
RM - 8278	681
RM - 8281	683
RM - 8286	688
RM - 8292	658
RM - 8305	685
RM - 8312	687
RM - 8320	674
RM - 8328	670
RM - 8346	683
RM - 8347	683
RM - 8348	683
RM - 8349	683
RM - 8351	689
RM - 8384	661
RM - 8410	671
RM - 8412	677
RM - 8413	659
RM - 8415	663
RM - 8420	691
RM - 8423	679
RM - 8425	675

Table of Cases by City
Volume 9
Issue 4

City/ State	Page
Amarillo, TX	879
Balsam Lake, WI	689
Bonanza, OR	683
Clayton, MO	914
Dayton, OH	702
Eagle River, WI	675
East Moline, IL	700
Escondido, CA	871
Firebaugh, CA	653
Firebaugh, CA	655
Fort Worth, TX	836
Grand Gorge, NY	688
Hawaiian Ocean View, HA	673
Hazlehurst, MS	663
Humacao, PR	698
Huntsville, MO	674
Jeffersonville, NY	687
June Lake, CA	653
June Lake, CA	655
Keno, OR	683
Lake Havasu City, AZ	649
Lakeview, OR	683
Louisville, KY	813
Malin, OR	683
Marathon, WI	658
Menomonie, WI	689
Merrill, OR	683
New York, NY	705
Norlina, NC	686
Oakhurst, CA	653
Oakhurst, CA	655
Ocean View, HA	673
Ola, AR	677
Olivia, MN	691
Palm Beach County, FL	908
Pauls Valley, OK	670
Pella, IA	674
San Luis Obispo, CA	894
Sauk Rapids, MN	691
Seattle, WA	860
Silverton, CO	661
South Hill, VA	682
Stevens Point, WI	658
Templeton, CA	685
The Dalles, OR	671
Tunica, MS	679
Walker, MN	659
Westbrook, ME	681
Wickenburg, AZ	649

Subject Index
Volume 9
Issue 4

Subject	Page
Access Charges	
End users, computation of charges on	
General information	
Notice, filing of tariff to provide minimum	721
Broadcast Radio Services - General Rules	
Applications	
Renewal/assignment/transfer, amendment to applications for 894,	871
Applications for authorization	
Objections, procedure for filing informal	836
Changes, renewals in existing stations	
Assignment or transfer of control, application for voluntary	698
Program contents	
Candidates for public office	651
Contests 700,	705
Records kept by stations	
Equal employment opportunity program 929, 894, 871,	860
	836
Broadcasting - FM Stations	
Allotments and assignments	
Allotments, table of 653, 655, 658,	649
659, 661, 663,	674
679, 677, 675,	671
670, 681, 691,	682
685, 686, 687,	688
	689
Cable Television Service	
Cablecasting	
Candidates for public office	651
Equal employment opportunity requirements	
Policy statement	908
Program, dissemination of opportunity	908
Technical regulations	
Signal notification requirements	702
Carriers: Service Altered	
Extensions and supplements	
Applications, contents of 665, 667, 669,	706
707, 710,	712
Commission Organization	
Delegations of authority - Chief, Common Carrier Bureau	
Limitations on delegated authority 796, 694,	720

Subject	Page
Common Carriers/Affiliates: Reports	
Depreciation rates, reports of proposed changes in	734
Common Carriers: Miscellaneous Rules	
Allocation of costs to regulated or non-regulated costs	690
Communications Act of 1934	
Common Carriers	
Accounts, records, memoranda,forms of; depreciation charges	734
Extension of lines, certificate for 665, 667, 669, 706, 707, 708, 710, 712	
Penal provisions; forfeitures	
Rebates and offsets, forfeitures in cases of 929, 894, 860, 836, 700, 698, 705	
Radio, provisions for	
Candidates for public office, facilities for 651, 813	
Radio, provisions relating to	
Applications;form of and conditions attached 929, 894, 879, 871, 860, 836	
Licenses, limitation on holding and transfer of 668, 698	
Practice and Procedure	
Information, general	
Rules, suspension, amendment, waiver 796, 715, 721, 697	
Proceedings, miscellaneous	
Forfeiture proceedings 908, 929, 894, 860, 836	
Public Mobile Service	
Applications and licenses-processing	
Consideration of applications	938
Domestic public cellular radio telecommunications service	
Applications for markets below the top 90, ownership in 938, 938	
Statutory Citations Other than Communications	
Implementation of policy	708
Telecommunications Companies: Classes A and B	
Comprehensive interperiod tax allocation	727
Nonregulated activities	690

TABLE OF STATUTORY AND RULE PROVISIONS

	Page
000.291 Delegated Authority	694
000.291 Delegated Authority	720
001.300 Suspension, Amendment or Waiver	697
001.300; Petitions for Waiver	715
025.118 Assignment or Transfer of Control of Station Authori	668
032.140 Regulated Accounts	690
032.220 Comprehensive interperiod tax allocation	727
032.230 Nonregulated Activities	690
032.4100 Net current deferred operating income taxes	727
032.4340 Net noncurrent deferred operating income taxes	727
043.430 Reports of proposed changes in depreciation rates	734
063.001 Contents of Application	665
063.001 Contents of Application	667
063.001 Contents of Application	669
063.001 Contents of Application	706
063.001 Contents of Application	707
063.001 Contents of Application	710
063.001 Contents of Application	712
064.901 Allocation of Costs	690
073.1216 Contest Violations	700
073.1216 Licensee-conducted contests	705
073.1940 Legally qualified candidates for public office	651
073.202 FM Table of Allotments	653
073.202 FM Table of Allotments	655
073.202 FM Table of Allotments	658
073.202 FM Table of Allotments	659
073.202 FM Table of Allotments	661
073.202 FM Table of Allotments	670
073.202 FM Table of Allotments	673
073.202 FM Table of Allotments	674
073.202 FM Table of Allotments	677
073.202 FM Table of Allotments	681
073.202 FM Table of Allotments	682
073.202 FM Table of Allotments	683
073.202 FM Table of Allotments	686
073.202 FM Table of Allotments	687
073.202 FM Table of Allotments	688
073.202 FM Table of Allotments	689
073.202 FM Table of Allotments	691
073.202, FM Table of Allotments	649
073.3540 Unauthorized Transfer of License	698
073.606 TV Table of Allotments	675
076.205 Origination cablecasts by legally qualified	651
076.610(b) Complaints regarding qualified NCE stations	702
300.214 Extension of Lines	665
300.214 Extension of Lines	667
300.214 Extension of Lines	669
300.214 Extension of Lines	706
300.214 Extension of Lines	707
300.214 Extension of Lines	708

300.214 Extension of Lines 710
300.214 Extension of Lines 712
300.220 Accounts, Records, Memoranda, Depreciation Charges 734
300.310 Limitation on Holding and Transfer of Licenses 668
300.310 Limitation on Holding and Transfer of Licenses 698
300.315 Facilities for candidates for public office 651
300.503(b) Forfeitures (Forfeiture Order) 700
300.503(b) Forfeitures (Notice of Apparent Liability) 698
300.503(b) Forfeitures (Notice of Apparent Liability) 705
300.535 Carriage of noncommercial educational television 702
400.201 Implementation of Policy 708
400.401 Applicability of Communications Act of 1934 708
Part 64, Joint Cost Rules 697

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 90-468

In the Matter of

Amendment of Section 73.202(b). RM-7380
Table of Allotments.
FM Broadcast Stations.
(Wickenburg and Lake Havasu City.
Arizona)

MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)

Adopted: January 13, 1994; Released: February 7, 1994

By the Chief, Policy and Rules Division:

1. The Commission has before it the Petition for Reconsideration filed by Interstate Broadcasting System of Arizona, Inc. ("Interstate"), licensee of Station KRDS-FM (formerly KTIM-FM), Channel 287C2, Wickenburg, Arizona, directed to the *Report and Order* in this proceeding, 6 FCC Rcd 5140 (1991). The *Report and Order* upgraded Station KRDS-FM to specify operation on Channel 287C1. Kenyon Communications, L.P. ("Kenyon"), former licensee of Station KRDS-FM filed Comments on Petition for Reconsideration. For the reasons discussed below, we are dismissing the Petition for Reconsideration.

BACKGROUND

2. This proceeding began with the filing of a petition for rule making by Kenyon proposing the substitution of Channel 287C1 for Channel 287C2 at Wickenburg, and modification of its Station KRDS-FM license to specify operation on Channel 287C1. In order to accommodate its proposed upgrade, Kenyon also proposed the substitution of Channel 282C2 for Channel 286C2 at Lake Havasu City, and modification of the Station KZUL-FM license to specify operation on Channel 282C2. In response to the *Notice of Proposed Rule Making and Order to Show Cause*, 5 FCC Rcd 6271 (1990), Kenyon filed comments supporting the proposal.[1] Mad Dog Wireless, Inc., licensee of Station KZUL-FM, did not file comments. Thereafter, we adopted the *Report and Order* in this proceeding upgrading Station KRDS-FM to Channel 287C1 at a reference site 31.2 kilometers (19.4 miles) north of Wickenburg. The *Report and Order* also modified the license of Station KZUL-FM to specify operation on Channel 282C2.

3. In its Petition for Reconsideration, Interstate claims that during the negotiations looking toward assignment of the Station KRDS-FM license, Kenyon represented that the proposed upgrade for Station KRDS-FM could be implemented at the present Station KRDS-FM transmitter site 25.1 kilometers (15.6 miles) north of Wickenburg. In view of its belief that the upgrade "cannot be implemented at all, as a practical matter, from the present transmitter site." Interstate modifies its expression of interest to the extent of accepting this upgrade only at the present transmitter site.

4. We are dismissing the Petition for Reconsideration. On February 3, 1992, Interstate filed an application to implement its Channel 287C1 upgrade for Station KRDS-FM (File No. BPH-920203IC). This application was filed in accordance with the equivalent protection criteria set forth in Section 73.215 of the Commission's Rules. The site specified in this application is the existing Station KRDS-FM transmitter site. As such, Interstate now envisions implementing this upgrade at its existing site, and the concerns expressed by Interstate in its Petition for Reconsideration are not, at this juncture, applicable.

5. Accordingly, IT IS ORDERED, That the aforementioned Petition for Reconsideration filed by Interstate Broadcasting System of Arizona, Inc. IS DISMISSED.

6. For further information concerning this proceeding, contact Robert Hayne, Mass Media Bureau (202) 634-6630.

FEDERAL COMMUNICATIONS COMMISSION

Douglas W. Webbink
Chief, Policy and Rules Division
Mass Media Bureau

[1] During the course of this proceeding, the Station KRDS-FM license was assigned to Interstate (File No. BALH-900827EE).

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: January 26, 1994

COMMENTS INVITED ON FLORIDA PUBLIC SAFETY PLAN AMENDMENT

On May 10, 1990, the Commission accepted the Public Safety Plan for Florida (Region 9). On October 25, 1993, Region 9 submitted a proposed amendment to its plan that would, in part, add an additional subregion, clarify timeframes for applications for pooled and dedicated channel allotments, add explicit channel loading requirements, and clarify and enlarge upon mutual aid requirements. Because the proposed amendment is a major change to the Region 9 plan, the Commission is soliciting comments from the public before taking action. (See Report and Order, General Docket No. 87-112, 3 FCC Rcd 905 (1987), at paragraph 57.)

Interested parties may file comments to the proposed amendment on or before **March 4, 1994** and reply comments on or before **March 21, 1994**. Commenters should send an original and five copies of comments to the Secretary, Federal Communications Commission, Washington, D.C. 20554 and should clearly identify them as submissions to Gen. Docket 90-119 Florida-Public Safety Region 9.

Questions regarding this public notice may be directed to Betty Woolford, Private Radio Bureau, (202) 632-6497 or Ray LaForge, Office of Engineering and Technology, (202) 653-8112.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 91-168

In the Matter of

Codification of the Commission's
Political Programming Policies

MEMORANDUM OPINION AND ORDER

Adopted: January 3, 1994; Released: January 27, 1994

By the Commission: Chairman Hundt abstaining from voting

1. This proceeding was begun in 1991 to revise and clarify our rules governing political programming. A *Report and Order* was released in 1991, and petitions for reconsideration were addressed in a 1992 *Memorandum Opinion and Order*.[1] A petition for judicial review of that proceeding is currently pending in the United States Court of Appeals for the Ninth Circuit.[2] The petitioners in that case have limited their challenge to the *Report and Order's* modification of the interpretation of the term "use" under Section 315 of the Communications Act. For the reasons set forth below, we have decided to return to the interpretation of "use" employed prior to the *Report and Order*.

2. Prior to the *Report and Order* in this proceeding, the Commission defined "use" by a "legally qualified candidate" under Section 315(a) as any "positive" appearance of a candidate by voice or picture. We had held that a disparaging use of a candidate's voice or picture, for example by a candidate's opponents, would not be considered a "use," but that any positive appearance, for example as an endorsement, even if unauthorized by the candidate and deemed harmful by him because of the nature of the endorsers, had been considered a "use" that would trigger the equal opportunity provision. *See NPRM*, 6 FCC Rcd 5707, 5717 ¶¶22-23; *Report & Order*, 7 FCC Rcd at 684 ¶30. We sought comment on whether we should continue this broad interpretation of a "use" for purposes of Section 315.

3. Commenters suggested that the Commission modify the definition of "use" to include only programs and announcements that were paid for or authorized by the candidate or his campaign committee. In the *Report and Order* we adopted this suggestion and narrowed our definition of "use" under Section 315 to include only non-exempt candidate appearances that are "controlled, approved, or sponsored by the candidate (or the candidate's authorized committee) after the candidate becomes legally qualified." 7 FCC Rcd at 685 ¶33. We concluded that both the language of the statute and the legislative history supported this narrower interpretation. *Id.* In addition, we believed that this narrower definition would simplify administration of Section 315 for broadcasters and would give candidates greater control of their campaign. *Id.* at ¶37.

4. Tracy Westen and the National Association for Better Broadcasting have sought judicial review of our redefinition of the term "use." They have argued that the Commission has consistently interpreted "use" broadly to include "any appearance of a candidate, by voice or picture, that is identifiable to the audience" whether or not the "use" is authorized by the candidate. They claim that because "Congress ratified this definition of use' in a 1959 amendment" to Section 315(a), the Commission is not free to modify it in any way. They also have argued that our modified interpretation frustrates Congress' purpose in adopting Section 315(a) because it permits broadcasters to "afford one candidate valuable public exposure without triggering any obligation to grant opponents the same opportunity."

5. We continue to find no basis for petitioners' statutory arguments. The 1959 news exemptions, far from ratifying the Commission's existing definition of "use," were enacted solely to correct what Congress believed was an overly-broad interpretation o& of that term.[3] Further, the Commission's "broad" interpretation of "use" was itself a departure from prior interpretations.[4] Petitioners also do not recognize longstanding exceptions to the broader interpretation of "use," such as the "fleeting use" provision[5] and our interpretation that appearances in a disparaging manner are not "uses." It is, in addition, well established that the Commission has especially broad authority to interpret and apply the provisions of Section 315.[6]

6. Nevertheless, upon further consideration, we now believe that the two policy justifications that supported our redefinition may not have been adequate in the circumstances. We indicated that narrowing the definition of "use" would simplify administration of Section 315 for broadcasters. *See Report & Order*, 7 FCC Rcd at 686 ¶37. We also indicated that we believed a narrowed definition of "use" would give candidates "greater control of their cam-

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[1] *Report and Order*, 7 FCC Rcd 678 (1991), *reconsid. granted in part and denied in part*, 7 FCC Rcd 4611 (1992). A petition for further reconsideration is currently pending. We also modified, in a separate order, certain of the rules relating to sponsorship identification in response to reconsideration petitions. *See Memorandum Opinion and Order*, 7 FCC Rcd 1616 (1992). A petition for further reconsideration of that action is also presently pending. As a result of the pendency of those further reconsideration petitions, we continue to have jurisdiction of this matter. *See TeleSTAR, Inc. v. FCC*, 888 F.2d 132, 133 (D.C. Cir. 1989).

[2] *Westen v. FCC*, No. 93-70041 (9th Cir., filed Jan 22, 1993).

[3] *See* S. Rep. No. 562, 86th Cong., 1st Sess. 5 (1959). Our rule change also expressly did not affect application of the equal opportunities requirement to news programs codified in the 1959 amendment. *See Report & Order*, 7 FCC Rcd at 685 n.51.

[4] Congress stated in 1959 that the Commission's "broad" interpretation of Section 315 in *CBS, Inc. (Lar Daly)*, 26 F.C.C. 715 (1959) had overturned three decades of applying Section 315 and its predecessor in the Radio Act narrowly so as not to include candidate appearances where "the candidate had in no way directly or indirectly initiated either the filming or presentation of the event . . . ." S. Rep. No. 562 at 5, *citing Alan H. Blondy*, 40 F.C.C. 284 (1957)

[5] *See The Law of Political Broadcasting and Cablecasting*, 100 F.C.C.2d 1476, 1492 ¶35 (1984).

[6] *Chisholm v. FCC*, 538 F.2d 349, 357 (D.C. Cir.), *cert. denied*, 429 U.S. 890 (1976).

paigns by attributing to them only those messages or associations they authorize or approve." *Id.* We continue to believe that these reasons are valid. However, in light of our obligation to explain fully the basis for changing a policy or statutory interpretation,[7] particularly one as established as our prior interpretation of "use," we now believe that the Commission should provide a more comprehensive examination of this issue. Typically, when the Commission has reevaluated its interpretation of Section 315, it has done so in a comprehensive manner. For example, in *Aspen Institute*, the Commission reversed its statutory interpretation of ten years' duration in order to permit a news exemption to the "use" definition for candidate debates.[8] Similarly, the Commission has engaged in more extensive analysis when it interpreted the "use" exemptions to include delayed broadcasts of news events and licensee-sponsored debates.[9] Until we have had an opportunity to give further consideration to this issue, and to seek further comment, we believe that the better course is to return to our previous interpretation.

7. Accordingly, it is ordered that pursuant to authority contained in Sections 4(i), 303(r) and 315 of the Communications Act, 47 U.S.C. §§ 154(i), 303(r), 315, the Commission's rules are amended as set forth in Appendix A to this *Order*, effective thirty days after publication in the Federal Register.

8. Further information in this proceeding may be obtained by contacting Milton O. Gross or Robert L. Baker, Mass Media Bureau at (202) 632-7586.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Appendix A

The rules adopted by the Commission in its December 23, 1991 *Report and Order* in this proceeding (7 FCC Rcd 678) are hereby amended as follows:

Title 47 CFR, Parts 73 and 76 are amended as follows:

1. Section 73.1940(b) is revised to read as follows:

(b) **Uses.** As used in this Section and Section 73.1942, the term "use" means a candidate appearance (including by voice or picture) or political advertisement that is not exempt under Section 73.1941(a)(1)-(4).

2. Section 76.205(b) is revised to read as follows:

(b) **Uses.** As used in this Section and Section 76.206, the term "use" means a candidate appearance (including by voice or picture) or political advertisement that is not exempt under Section 76.205(a)(1)-(4).

---

[7] *See, e.g., Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971).

[8] *Aspen Institute*, 55 F.C.C.2d 697 (1975), *aff'd, Chisholm v. FCC*, 538 F.2d 349 (D.C. Cir.), *cert. denied*, 429 U.S. 890 (1976).

[9] *Delaware Broadcasting Co.*, 60 F.C.C.2d 1030 (1976), *aff'd, Office of Communication of the United Church of Christ v. FCC*, 590 F.2d 1063 (D.C. Cir. 1978); *Henry Geller*, 95 F.C.C.2d 1236 (1983), *aff'd, League of Women Voters Educ. Fund v. FCC*, 731 F.2d 995 (D.C. Cir. 1984).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-33

In the Matter of

Amendment of Section 73.202(b),	RM-8160
Table of Allotments,	RM-8233
FM Broadcast Stations.	
(Oakhurst, Firebaugh and	
June Lake, California)[1]	

FIRST REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 11, 1994; Released: February 7, 1994

By the Acting Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 8 FCC Rcd 1544 (1993), issued in response to a petition filed on behalf of California Sierra Corporation ("petitioner"), licensee of Station KAAT-FM, Channel 296A, Oakhurst, California, proposing the substitution of Channel 276A for Channel 296A and modification of its license accordingly. Additionally, to accommodate its proposal, petitioner requested the substitution of Channel 234A for Channel 276A at Firebaugh, California.[2] Petitioner filed supporting and reply coments. Comments were also filed by Patrick R. Ryan ("Ryan"), permittee of Station KMMM(FM), Madera, California, as well as by Yosemite Union High School District ("Yosemite"), Bass Lake School District ("Bass Lake") and Golden Oak Bank ("Golden Oak").[3] Comments and a counterproposal were filed by Linda Ware ("Ware").[4] A conflicting proposal was filed by Don Stewart ("Stewart") requesting the allotment of Channel 276A to June Lake, California.[5] CVES also filed comments.[6] Responsive comments were also filed by Harry J. Pappas ("Pappas"), licensee of Station KMPH-FM, Channel 298B, Hanford, California.[7]

2. As indicated in the *Notice*, petitioner's proposal is premised on its desire to increase the effective radiated power of Station KAAT(FM) to 6 kilowatts, a benefit from which it is presently precluded, due to the close proximity of Station KMMM(FM), Channel 297A, Madera, California. The distance between Oakhurst and Madera is 64.4 kilometers (40 miles) whereas 72 kilometers (45 miles) is required in this instance. Petitioner comments that adoption of its proposal would also alleviate interference it is receiving from Station KQLB(FM), Channel 295A, Los Banos, California, which recently became operational.

3. In response to the *Notice*, Stewart requested the allotment of Channel 276A to June Lake, California, as a first local aural service. The p distance between June Lake and Oakhurst is 71.5 kilometers (44.3 miles), whereas a distance of 115 kilometers (71 miles) is required in this instance.[8] In an effort to accommodate each proposal, we have determined the availability of an alternate channel to resolve the conflict between the mutually exclusive propos-

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[1] June Lake has been added to the caption.

[2] As indicated in the *Notice*, Channel 276A at Firebaugh is vacant. A petition for reconsideration seeking reinstatement of its application for Channel 276A at Firebaugh was filed by Central Valley Educational Services, Inc. ("CVES") (File No. BPED-881017MD).

[3] The comments of Ryan, Yosemite, Bass Lake and Golden Oak were not served on the petitioner, in violation of Section 1.420(c) of the Commission's Rules, and therefore they have not been accepted for consideration.

[4] Ware's counterproposal is unacceptable. Ware requests the retention of Channel 296A at Oakhurst as a second local FM service, for which she expressed an interest in applying. However, Ware's counterproposal was late filed and was not served on the petitioner, by required by Section 1.420(c) of the Commission's Rules. Moreover, while Ware signed her counterproposal and provided an address, she failed to include an affidavit verifying that the statements contained in her comments are accurate to the best of her knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. *See also Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, n.41 (1990).

[5] Public Notice of the counterproposal was given May 12, 1993, Report No. 1940.

[6] CVES' comments are unacceptable. CVES requests the retention of Channel 276A at Firebaugh for a future upgrade to Channel 276B1, in the evnet its application for Channel 276A (File No. BPED-881017MD) is granted. Alternatively, CVES requests that Channel 276B1 be allotted to Oakhurst as that community's second local service for general application. CVES avers that other options are available to petitioner for a 6 kilowatt operation for Station KAAT(FM) at Oakhurst.

However, Channel 276B1 is ineligible for consideration at Oakhurst as we have no expression of interest in the higher class facility. *See Lopez and Dushore, Pennsylvania*, 7 FCC Rcd 854 (1992). Nor is CVES eligible to express an interest in the potential future use of Channel 276B1 at Firebaugh since the request for reconsideration of the dismissal of its application for Channel 276A at that community remains pending.

Moreover, even if CVES had been eligible to express an interest in Channel 276B1 at Oakhurst or Firebaugh, it did not provide a technical showing to demonstrate that the proposal would comply with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules. *See* Section 1.401(c) of the Commission's Rules. *See also, Birmingham, Alabama*, 7 RR 2d 1649 (1966). As a result of our determination, we need not consider responsive comments related to CVES' proposal.

[7] Pappas' comments are directed to the counterproposals filed by Ware and Stewart. In view of our rejection of Ware's counterproposal, as indicated *supra*, and our determination regarding Stewart's counterproposal, as discussed *infra*, Pappas' comments need not be considered.

[8] Coordinates for unrestricted Channel 276A at June Lake are 37-47-06 and 119-04-06.

als. Specifically, we have determined that Channel 226A is available for consideration at June Lake, which permits the consideration of Channel 276A at Oakhurst without the need for a comparative analysis of the two proposals.[9]

4. However, we are unable to determined whether June Lake is a community for allotment purposes. Stewart merely comments that June Lake "... is a growing community" that "deserves its own local radio service." We note that June Lake is not listed in the 1990 U.S. Census nor incorporated, but is listed in the 1993 *Rand McNally Commercial Atlas and Marketing Guide*, which attributes it with a population of 900, and indicates that it has a post office. However, those factors, standing alone, are not sufficient to warrant a determination that June Lake is a *bona fide* community for allotment purposes. *See Oak Beach and Bay Shore, New York*, 57 RR 2d 1275 (1985). Therefore, since June Lake is neither listed in the U.S. Census nor incorporated, we believe that additional demographic data is required to assist us in determining whether it is a community for allotment purposes. Therefore, we will not allot a channel to June Lake at this juncture, but rather will issue a separate *Further Notice* in this proceeding requesting additional information in order to ascertain June Lake's status. *See Canton, Tioga and Ulysses, Pennsylvania*, 2 FCC Rcd 2055 (1987).

5. We believe the public interest would be served by substituting Channel 276A for Channel 296A at Oakhurst, California, and by substituting Channel 234A for Channel 276A at Firebaugh, California, since it could enable Station KAAT(FM) to increase its power to 6 kilowatts, thereby expanding its coverage area. As indicated in the *Notice*, Channel 276A can be allotted to Oakhurst in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules at the petitioner's licensed site at coordinates 37-25-08 and 119-44-04. Additionally, Channel 234A can be substituted for Channel 276A at Firebaugh, California, without a site restriction at coordinates 36-51-30 and 120-27-12. Additionally, in the event CVES's application is reinstated at Firebaugh on reconsideration, Channel 234A may be used at the site proposed in its application at coordinates 36-47-30 and 120-30-00. Accordingly, we will serve a copy of this *Notice* on CVES. In the event CVES' application is reinstated, it may amend its application without the loss of cut off protection. *See Salamanca, New York and Bradford, Pennsylvania*, 50 FR 26208 (1985) and *Sanibel, Florida*, 50 FR 32706 (1985).

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(ç)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective March 24, 1994, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the communities listed below, as follows:

City	Channel No.
Firebaugh, California	234A
Oakhurst, California	276A

7. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license of California Sierra Corporation for Station KAAT(FM), IS MODIFIED to specify operation on Channel 276A in lieu of Channel 296A, subject to the following conditions:

(a) Nothing contained herein shall be construed as authorizing any change in Station KAAT(FM)'s license, BLH-841123LW, except the channel as specified above. Any other changes, except those so specified under Section 73.1690 of the Rules, require prior authorization pursuant to an application for a construction permit (FCC Form 301).

(b) Program tests may be conducted in accordance with the provisions of Section 73.1620 of the Rules, PROVIDED the transmission facilities comply in all respects with license BLH-841123LW, except for the channel as specified above, and a license application (FCC Form 302) is filed within 10 days of commencement of program tests.

8. IT IS FURTHER ORDERED, That the Secretary of the Commission shall send a copy of this *Order* by Certified Mail, Return Receipt Requested, to the applicant for Channel 276A at Firebaugh, California, as follows: Central Valley Educational Services, Inc., 12550 Brookhurst Street, Garden Grove, California 92640.

9. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED with respect to RM-8160 only.

10. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[9] As a result of our determination, petitioner's responsive comments to Stewart's counterproposal will not be discussed.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-33

In the Matter of

Amendment of Section 73.202(b),	RM-8160
Table of Allotments,	RM-8233
FM Broadcast Stations.	
(Oakhurst, Firebaugh and *June Lake*, California)[1]	

FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: January 11, 1994; Released: February 7, 1994

Comment Date: March 31, 1994
Reply Comment Date: April 15, 1994

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is the request of Don Stewart ("petitioner") seeking the allotment of a Class A FM channel to June Lake, California, as its first local aural service. Petitioner filed its request as a counterproposal to the *Notice of Proposed Rule Making*, 8 FCC Rcd 1544 (1993), which proposed the substitution of Channel 276A for Channel 296A at Oakhurst, California, and modification of the license for Station KAAT(FM), as well as the substitution of Channel 234A for Channel 276A at Firebaugh, California, to accommodate the Oakhurst modification, as requested by California Sierra Corporation.[2] [3] As stated in a separate *First Report and Order* in this proceeding, 9 FCC Rcd (adopted January, 1994), we have determined that Channel 226A can be allotted to June Lake[4] in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules. However, as June Lake is not listed in the U.S. Census, and is not incorporated, we declined to allot the channel in the absence of further demographic information.

2. Section 307(b) of the Communications Act of 1934, as amended, requires that the Commission allot channels "... among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or listed in the U.S. Census, that is sufficient to satisfy its status. Absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic, or cultural indicia to qualify it as a community for allotment purposes. *See, e.g., Oak Grove, Florida*, 5 FCC Rcd 3774 (1990); *Hannibal, Ohio*, 5 FCC Rcd 3315 (1990); and *Statenville, Georgia*, 5 FCC Rcd 2685 (1990). June Lake is not listed in the U.S. Census.[5] Therefore, petitioner is requested to submit information regarding June Lake to demonstrate whether it has any commercial establishments, social, economic, cultural or religious organizations, municipal services, or governmental units that identify themselves specifically with that locality.[6]

3. A staff review has determined that Channel 226A can be allotted to June Lake without the imposition of a site restriction at coordinates 37-47-06 and 119-04-06.

4. We believe the public interest may be served by seeking further information regarding the status of June Lake as a community for allotment purposes since the proposal could provide a first local aural service to that locality. However, this *Further Notice* does not afford additional opportunity to file counterproposals since such an opportunity was provided in response to the *Notice*. Accordingly, we seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to June Lake, California, as follows:

	Channel No.	
City	Present	Proposed
June Lake, California	--	226A

[1] June Lake has been added to the caption.

[2] Although petitioner's request was signed, he failed to include an affidavit verifying that the statements contained in the petition are accurate to the best of his knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. *See also Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, n.41 (1990). Petitioner is requested to rectify this omission in his comments.

[3] Additionally, Stewart did not state an intention to apply for a Class A channel, if allotted to June Lake, and should correct the omission in his comments. Stewart merely stated his "interest" in applying for a new FM station at June Lake. However, the proponent of an allotment proposal, to be considered *bona fide* must state a clear intention to apply for the channel, as well as a willingness to construct a station. *See, Lopez and Dushore, Pennsylvania*, 7 FCC Rcd 854 (1992).

[4] In view of the discrepancies noted above, we wish to clarify that had another channel not been available for consideration at June Lake, Stewart's proposal would have been rejected as counterproposals must be technically and procedurally correct at the time of their filing. *See Fort Bragg, California*, 6 FCC Rcd 5817 (1991).

[5] We do note that June Lake is listed in the 1993 Rand McNally Commercial Atlas and Marketing Guide (*"Atlas"*) with a population of 900 (summer population is listed as 2,500). However, mere geographic location is not sufficient to establish community status. *See, Vimville, Mississippi*, 48 FR 5974 (1983).

[6] The *Atlas* also indicates that June Lake has a post office and its own zip code. However, those attributes alone are not sufficient to establish community status. *See Coker, Alabama*, 43 RR 2d 190 (1978).

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before March 31, 1994, and reply comments on or before April 15 , 1994, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Don Stewart

12550 Brookhurst Street - #A

Garden Grove, CA 92640

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-227

In the Matter of

Amendment of Section 73.202(b), RM-8292
Table of Allotments,
FM Broadcast Stations.
(Marathon and Stevens Point,
Wisconsin)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 14, 1994; Released: February 7, 1994

By the Acting Chief, Allocations Branch:

1. At the request of Eagle of Wisconsin, Inc. ("petitioner"), the Commission has before it for consideration the *Notice of Proposed Rule Making*, 8 FCC Rcd 5291 (1993), proposing the substitution of Channel 285A for Channel 285C3 at Marathon, Wisconsin, modification of the license for Station WMGU(FM) to specify operation on Channel 285A and reallotment of Channel 285A to Stevens Point, Wisconsin.[1] Petitioner and Sauk Broadcasting Corp. ("Sauk") filed comments in support of the proposal.[2] On December 15, 1993, petitioner filed comments withdrawing its interest in the allotment at Stevens Point.[3]

2. As stated in the *Notice*, a showing of continuing interest is required before a channel will be allotted, and absent such an expression of interest, it is the Commission's policy to refrain from allotting the channel. Therefore, we shall grant petitioner's request to dismiss its proposal.

3. Accordingly, IT IS ORDERED, That the request of Eagle of Wisconsin, Inc. to substitute Channel 285A for Channel 285C3 and reallot the channel from Marathon, Wisconsin, to Stevens Point, Wisconsin, IS DISMISSED.

4. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

5. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] An application for the assignment of the license for station WMGU(FM), Stevens Point, from petitioner to Americus Communications Corporation (BALH-931215GG)

[2] Sauk is the licensee of FM Station WNFM, Reedsburg, Wisconsin. Sauk's application seeking operation at six kilowatts is short-spaced to Channel 285C3, Marathon, but is consistent with Channel 285A at Stevens Point.

[3] In accordance with Section 1.420(j) of the Commission's Rules, petitioner states that it received no consideration in exchange for withdrawing its expression of interest.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-4

In the Matter of

Amendment of Section 73.202(b), RM-8413
Table of Allotments,
FM Broadcast Stations.
(Walker, Minnesota)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 14, 1994; Released: February 8, 1994

Comment Date: April 1, 1994
Reply Comment Date: April 18, 1994

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Roger Paskvan ("petitioner"), seeking the allotment of Channel 270A to Walker, Minnesota, as that community's second FM broadcast service. Petitioner submitted information in support of the proposal and stated his intention to file an application for Channel 270A if the channel is allotted to Walker.

2. We believe petitioner's proposal warrants consideration. Channel 270A can be allotted to Walker, Minnesota, in compliance with the minimum distance separation requirements of the Commission's Rules provided there is a site restriction 3 kilometers (2 miles) northeast of the community.[1] The site restriction will prevent a short spacing to Channel 270C1, Station KFGO-FM, Fargo, North Dakota.[2] Since Walker is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be obtained for this allotment.

3. In view of the fact that the proposed allotment would provide a second local FM broadcast service to Walker, Minnesota, the Commission believes it would serve the public interest to propose amending the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Walker, Minnesota	256C1	256C1, 270A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **April 1, 1994**, and reply comments on or before **April 18, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's, counsel, as follows:

Harry F. Cole
Bechtel & Cole, Chartered
1901 L Street, N. W., Suite 250
Washington, D.C. 20036

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

[1] The coordinates for Channel 270A at Walker are 47-07-08 and 94-33-22.

[2] We do note that although Station KFGO-FM, Fargo, North Dakota, is licensed on Channel 270C1, the Table of Allotments, Section 73.202(b) of the Commission's Rules, shows the allotment of Channel 270C in Fargo. Upon termination of this proceeding, the Table of Allotments will be corrected to reflect the allotment of Channel 270C1 at Fargo.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-3

In the Matter of

Amendment of Section 73.202(b), RM-8384
Table of Allotments,
FM Broadcast Stations.
(Silverton, Colorado)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 14, 1994; Released: February 8, 1994

Comment Date: April 1, 1994
Reply Comment Date: April 18, 1994

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Caren Lacy ("petitioner") permittee of Station KWXA(FM), Channel 259C2, Durango, Colorado, requesting the substitution of a Class A channel for Channel 257A at Silverton, which is vacant and unapplied for, to accommodate petitioner's construction permit application site located on Forest Service land.

2. Petitioner advises that it received a reasonable assurance from the Forest Service of a leased transmitter site to accommodate its application proposal. Although petitioner was granted a construction permit (File No. BPH-910227MG) at coordinates 37-19-59 and 107-49-13, it has been advised that the Forest Service requires communications facilities within its confines to be located at designated electronics sites. Accordingly, petitioner advises that the Forest Service has specified an electronics site at coordinates 37-20-21 and 107-49-25 to accommodate communications installations. However, the Forest Service's designated site is 54.3 kilometers from Channel 257A at Silverton, at coordinates 37-48-18 and 107-38-03, whereas a distance of 55 kilometers is required between second adjacent Class A and C2 channels. Petitioner states that no other Class C2 channel is available as a substitute for Channel 259C2 at Durango. Moreover, petitioner states that while a downgrade to Class C3 status at the Forest Service's designated site would negate the noted spacing deficiency, such action would deprive petitioner of the opportunity to provide expanded service to the Durango area, as previously authorized. Therefore, in an effort to accommodate petitioner's application for Channel 259C2 at Durango, petitioner seeks the substitution of another equivalent Class A channel for Channel 257A at Silverton.[1] Although petitioner suggested several Class A channels, we have determined that Channel 224A is preferable as it would afford greater flexibility in site selection.

3. We believe the public interest would be served by seeking comments on the proposed substitution of Channel 224A for Channel 257A at Silverton to accommodate the petitioner's application site for Channel 259C2 at Durango. As indicated in footnote 1, *supra*, if no applications are filed for Channel 257A during the comment period in this proceeding, and no interest is expressed for Channel 224A, we shall delete Channel 257A at Silverton without replacement for lack of interest.

4. Channel 224A can be allotted to Silverton without the imposition of a site restriction at coordinates 37-48-43 and 107-39-50.

5. In light of the above, the Commission believes it is appropriate to solicit comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

OPTION I

	Channel No.	
City	Present	Proposed
Silverton, Colorado	257A, 279C2, 297C	224A, 279C2, 297C

OPTION II

Silverton, Colorado	257A, 279C2, 297C	279C2, 297C

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before **April 1, 1994**, and reply comments on or before **April 18, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Caren Lacy
1885 Ponder Heights Drive
Colorado Springs, CO 80906-5888

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table

[1] Channel 257A was allotted to Silverton in MM Docket No. 83-85. The channel is vacant with no applications on file. If applications are filed for Channel 257A at Silverton during the comment period in this proceeding, the applicants will retain cut-off protection and will be permitted to specify a new Class A channel, if the instant proposal is adopted. If no applications are filed as specified above, we will delete Channel 257A at Silverton and no substitute channel will be made to the community.

of Allotments. Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-2

In the Matter of

Amendment of Section 73.202(b), RM-8415
Table of Allotments,
FM Broadcast Stations.
(Hazlehurst, Mississippi)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 14, 1994; Released: February 8, 1994

Comment Date: April 1, 1994
Reply Comment Date: April 18, 1994

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by PDB Broadcasting ("petitioner"), requesting the allotment of Channel 282A to Hazlehurst, Mississippi, as the community's second local commercial FM transmission service. Petitioner states it will apply for channel, if allotted.

2. We believe the public interest would be served by proposing the allotment of Channel 282A to Hazlehurst since an interest has been expressed in providing the community with an additional local aural broadcast service. Channel 282A can be allotted to Hazlehurst in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.9 kilometers (8.6 miles) southwest in order to avoid a short-spacing with the allotment coordinates for Channel 283C3 at Tallulah, Louisiana.[1]

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Hazlehurst, Mississippi	265C3	265C3, 282A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **April 1, 1994**, and reply comments on or before **April 18, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Richard M Riehl, Esq.
Haley, Bader & Potts
4350 North Fairfax Drive
Suite 900
Arlington, Virginia 22203-1633
(Counsel for petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202)634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 282A at Hazlehurst are North Latitude 31-45-57 and West Longitude 90-29-35.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

PACIFIC GATEWAY EXCHANGE, INC. — File No. I-T-C-93-216

Application for authority pursuant to Section 214 of the Communications Act of 1934, as amended, to resell international private line services to Canada.

ORDER AND CERTIFICATE

Adopted: January 18, 1994; Released: February 8, 1994

By the Chief, International Facilities Division:

1. The above-captioned application filed by Pacific Gateway Exchange, Inc. (Pacific Gateway) requests authority to resell international private lines for the provision of switched services and private line services between the United States and Canada only.[1]

2. The application was placed on public notice on June 9, 1993. Subsequently, AT&T filed a Petition to Deny, in response to which Pacific Gateway filed an Opposition.

3. AT&T's petition addresses three issues. First, AT&T argues that through the use of traditional operating agreements that include the accounting rate at which the switched minutes are to be settled, Pacific Gateway seeks to avoid the equivalency requirements of the *International Resale Order*.[2] AT&T maintains that in doing so Pacific Gateway seeks to avoid classification as a reseller. Second, AT&T argues that Canada does not afford resale opportunities equivalent to those available under U.S. law. Third, AT&T urges the Commission to impose additional reporting requirements as a condition to Pacific Gateway's authorization to resell international private lines for switched services between the United States and Canada.[3]

4. The Commission first addressed the issue of Canadian equivalency in the *fONOROLA Corporation and EMI Communications Corporation Order* (*fONOROLA/EMI Order*).[4] In that Order, the Commission found that Canada affords equivalent resale opportunities. As a result, resale of international private lines for switched services and of interconnected international private lines for private line services between the United States and Canada is permitted subject to appropriate authorization.[5] However, subsequent to the Commission's equivalency determination, AT&T filed a petition for reconsideration of the *fONOROLA/EMI Order* in which it raised two of the same issues that it raises here. Specifically, AT&T argues in its petition that Canada does not afford equivalent resale opportunities and that the Commission should adopt monthly reporting requirements for all private line resellers. We will address these issues in the context of AT&T's petition for reconsideration of the *fONOROLA/EMI Order*.[6]

5. Contrary to AT&T's assertions, Pacific Gateway states that it does not seek to, nor does it, bypass the requirements of the *International Resale Order* through use of traditional foreign operating agreements which include an accounting rate.[7] Pacific Gateway does not, as AT&T argues, suggest that the payment of settlements on switched services provided over interconnected private lines allows it to bypass the *International Resale Order*. Instead, Pacific Gateway specifically states that it seeks to act in accordance with the *International Resale Order*. According to Pacific Gateway, the operating agreements serve to show that its application will not undermine the Commission's interna-

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[1] Of the proposed forty-eight 64-Kbps equivalent circuits, Pacific Gateway clarified that it is requesting to operate, forty-two 64-Kbps equivalent circuits for the provision of international switched services and six 64-Kbps equivalent circuits for the provision of international private line services between the United States and Canada. (*See* Letter from Gail E. Granton, Vice-President and Counsel, Pacific Gateway to William S. Caton, Acting Secretary, Federal Communications Commission, dated December 27, 1993.)

[2] *Regulation of International Accounting Rates, Phase II, First Report and Order, (International Resale Order)*, 7 FCC Rcd 559 (1991).

[3] Specifically, AT&T urges the Commission to impose monthly traffic reporting and tracking requirements to determine whether the net settlements outpayment' increases as a result of the interconnection of private lines from Canada to the United States public switched network (PSN). As proposed, the monthly traffic reports would indicate a private line reseller's billed minutes, broken down by service category. The test would require the Commission to suspend international resale authorizations between Canada and the United States pending further investigation if for three consecutive months the traffic reports demonstrate an increase in U.S. outpayments attributable to more southbound than northbound switched minutes diverted to international private lines.

[4] See *fONOROLA/EMI Order*, 7 FCC Rcd 7312 (1992), *petition for recon. pending.*

[5] The Commission has concluded that the public interest in cost-based international telecommunications services would be served by the encouragement of international resale, provided that steps were taken to ensure that such resale did not result in the unilateral diversion of U.S. inbound switched traffic to private lines, and thus, exacerbate the settlements deficit. The Commission, therefore, conditioned its resale policy by requiring U.S. carriers to permit resale of their international private lines only to those countries which afford equivalent resale opportunities. (*See Regulation of International Accounting Rates*, CC Docket 90-337, Phase II, First Report and Order, 7 FCC Rcd 559 (1992)). Subsequently, the Commission stated that the resale of international private lines for the provision of international private line services, as opposed to switched services, does not implicate the settlements process to the extent such lines are used only to carry non-switched traffic that is not subject to the international settlements process, and thus clarified that the equivalency requirement does not apply to the resale of international private lines for private line services. Nonetheless, the Commission confirmed the right of the end user to interconnect its international private line to the PSN through, for example, its own PBX. (*See Regulation of International Accounting Rates*, CC Docket 90-337, Phase II, Order on Reconsideration and Third Further Notice of Proposed Rulemaking (*Phase II Third Further Notice)*, 7 FCC Rcd 7927 (1992)).

[6] *See supra*, n.3.,

[7] *See Pacific Gateway Opposition* at 3-4. The operating agreements will be settled under the current International Accounting Rate in effect between the United States and Canada.

tional settlement policies.[8] In addition, we note that our *International Resale Order* did not preclude U.S. private line resellers from entering into traditional operating agreements with their foreign correspondents.[9] Thus, we conclude that a U.S. carrier that enters into an operating agreement, including accounting rates, with its foreign correspondents does not escape the application of our international resale policy.

6. We find that the present and future public convenience and necessity require the resale of international private lines for the provision of switched services and interconnected private line services to the general public by Pacific Gateway.[10]

7. Accordingly, IT IS ORDERED that application File No. I-T-C-93-216 IS GRANTED and Pacific Gateway is authorized to lease from appropriately authorized carriers'[11] and operate up to forty-two (42) 64-Kbps equivalent circuits for the provision of switched voice services and six (6) 64-Kbps equivalent circuits for the provision of private line services between the United States and Canada only-- that is, private lines which carry traffic that originates in the United States and terminates in Canada, or traffic that originates in Canada and terminates in the United States.

8. IT IS FURTHER ORDERED that neither Pacific Gateway nor any persons or companies directly or indirectly controlling it or controlled by it, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which Pacific Gateway or any such persons or companies controlling or controlled by Pacific Gateway are parties.

9. IT IS FURTHER ORDERED that Pacific Gateway shall file annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

10. IT IS FURTHER ORDERED that Pacific Gateway shall file tariff provisions pursuant to Section 203 of the Communications Act, 47 U.S.C. §203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

11. IT IS FURTHER ORDERED that:

(a) Pacific Gateway shall file publicly any contracts entered into with other carriers or a contract summary in accordance with Section 203 of the Communications Act, 47 C.F.R. §203, and the *Interexchange Order;*[12]

(b) the services obtained by Pacific Gateway shall be made generally available to similarly situated customers at the same terms, conditions and rates.

12. IT IS FURTHER ORDERED that Pacific Gateway shall file semi-annual reports of circuit additions, pursuant to Section 63.15(b) of the Commission's Rules, 47 C.F.R. §63.15(b).

13. IT IS FURTHER ORDERED that Pacific Gateway shall file with the Commission a copy of any operating agreement entered into with its foreign correspondents within thirty (30) days of its execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. §43.51.

14. IT IS FURTHER ORDERED that Pacific Gateway shall file all arrangements for private line interconnection to the United States public switched network, pursuant to Section 43.51(a) of the Commission's Rules, 47 C.F.R. §43.51(a).

15. IT IS FURTHER ORDERED that this Order may be subject to future modification pursuant to the outcome of the *Phase II Third Further Notice, fONOROLA/EMI Order (recon. pending)*, and any related proceedings.

16. IT IS FURTHER ORDERED that AT&T's Petition to Deny IS DEFERRED for consideration in the *fONOROLA/EMI Order.*

17. IT IS FURTHER ORDERED that grant of this authorization to resell international private lines for the provision of switched services and interconnected private line services between the United States and Canada is conditioned upon Canada's continuing to afford resale opportunities equivalent to those available under U.S. law.

18. This Order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within thirty (30) days of the public notice of this Order (*See* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities
Division
Common Carrier Bureau

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[8] Id. *See also Application of Pacific Gateway* at 2-3.

[9] *See International Resale Order*, 7 FCC Rcd at 562.

[10] Pacific Gateway states that it will obtain the necessary capacity pursuant to tariffs of the underlying carriers authorized to provide switched and private line services as set forth in AT&T Tariffs F.C.C. Nos. 9 and 11; MCI International Telecommunications Corp. Tariff F.C.C. No. 1; Sprint Communications Tariffs F.C.C. Nos. 3, 5, and 7; TRT/FTC Communications, Inc. Tariffs F.C.C. Nos. 3 and 13; and Wiltel, Inc. Tariff F.C.C. No. 2. Pacific Gateway will also obtain capacity pursuant to intercarrier agreements. Any intercarrier agreements will be filed with the Commission. *See infra*, para. 12.

[11] *Id.*

[12] *See Competition in the Interstate Interexchange Marketplace*, 6 FCC Rcd 5880, 5902 (1991) (*Interexchange Order*).

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter

COMSAT CORPORATION File No. ITC-94-025

Application for authority under Section 504(c) of the International Maritime Satellite Telecommunications Act of 1978 and Section 214 of the Communications Act of 1934 to provide Inmarsat M and Inmarsat B mobile-satellite communications services in the Indian Ocean Region through land earth station facilities in Malaysia and to acquire and operate associated leased line facilities

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: January 21, 1994; Released: February 8, 1994

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Section 504(c) of the International Maritime Satellite Telecommunications Act of 1978 and Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity require the provision of Inmarsat M and Inmarsat B mobile satellite services to the Indian Ocean Region (IOR) through the new land earth station facilities at Kuantan, Malaysia by Comsat Corporation (Comsat).

2. Accordingly, IT IS ORDERED that application File No. I-T-C-94-025 IS GRANTED and Comsat is authorized to:

(a) provide Inmarsat M and Inmarsat B mobile communications services in the IOR, subject to conditions and limitations that apply to Comsat's existing services;

(b) provide these new services via the second generation Inmarsat IOR satellite (with first generation satellites as backup capacity) through a new Inmarsat M and B land earth station in Kuantan, Malaysia, and through dedicated leased lines interconnecting the Malaysian facilities and Comsat's existing terrestrial interfaces at Santa Paula, California; and

(c) acquire and operate necessary leased lines to provide the above-described services.

3. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

PanAmSat, L.P. File No. CSS-94-003
577-DSE-AL-94

and

PanAmSat Licensee Corp.

Application for Consent to *pro forma* Assignment of International Space Station Licenses and Domestic and International Earth Station Licenses

MEMORANDUM OPINION AND ORDER

Adopted: January 28, 1994; Released: February 8, 1994

By the Chief, Common Carrier Bureau:

1. The above-referenced application seeks consent to the *pro forma* assignment of various international space station licenses and domestic and international earth station licenses from PanAmSat, L.P. (PAS, L.P.) to PanAmSat Licensee Corp. (PAS Licensee). For the reasons stated below, we grant the *pro forma* assignment.

2. Under the proposed assignment, PAS, L.P. will assign its licenses to PAS Licensee, a wholly-owned subsidiary of PAS, L.P. PAS, L.P. is controlled by PanAmSat, Inc. (PAS, Inc.), which is the Managing General Partner of PAS, L.P. and which is owned exclusively by Rene Anselmo. The Directors of PAS, Inc. include Rene Anselmo, Fred Landman and Lourdes Saralegui. The directors of PAS Licensee are identical to those of PAS, Inc. The officers of PAS Licensee include Anselmo, Landman and Saralegui, as well as Berta Escurra, who is a U.S. citizen. The applications state that the authorizations will be used in connection with the operation of the separate international satellite system "commonly known as 'PanAmSat.'" and that the assignment is being made in connection with a bond offering recently made by PAS, L.P. That bond offering, according to the applicants, will help PAS, L.P. to finance an expansion of its separate international satellite system into a global system.

3. Upon consideration of the *pro forma* application and relevant Commission policy, we find that the proposed assignment does not involve a change in ownership or control which would adversely affect the public interest. The proposed assignee is owned and controlled by PAS, L.P., which presently holds the authorizations. Control and management of the day-to-day activities of PAS Licensee and of the authorizations will remain with PanAmSat, Inc., which holds the controlling interest in PAS, L.P. Accordingly, we consent to the proposed assignment of PAS, L.P.'s authorizations.

4. Accordingly, IT IS ORDERED that the application filed by PAS, L.P. for consent to the *pro forma* assignment of the authorizations listed in Appendix A to PAS Licensee IS GRANTED.

5. IT IS FURTHER ORDERED that PAS Licensee shall inform the Commission in the event that ownership of PAS Licensee changes.

6. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Acting Chief, Common Carrier Bureau

APPENDIX A

Licenses Which Applicants Propose to Assign

Satellites: PAS-1 (CSS-84-004-P(LA)); PAS-2 (CSS-84-004-P(LA), CSS-88-003(M))*+; PAS-4 (CSS-91-003)*+; PAS-6 (CSS-91-005)+; PAS-7 (CSS-91-006)*+.

Earth Stations: KA-244 (CSG-89-001-P/L, CSG-90-029-ML); KA-245 (CSG-89-002-P/L, CSG-93-050-ML); KA-302 (CSG-91-113-P/L); KA-344 (CSG-92-127-P/L); KA-319 (CSG-91-138-P/L); E890530 (1114-DSE-P/L-89).

* Includes waivers of Section 319(d) of the Communications Act of 1934, as amended, with respect to the amounts that may be spent on construction.

+ Includes conditional authorizations only.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

EMI Communications Corporation — File No. I-T-C-94-015

Application for Amendment of EMI Communications Corporation's Certificate of Public Convenience and Necessity to Provide International Private Line Services Between the United States and Canada on a Resale Basis

ORDER AND AUTHORIZATION

Adopted: January 13, 1994; Released: February 8, 1994

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested application, filed by EMI Communications Corporation (EMI) pursuant to Section 214 of the Communications Act of 1934, as amended, we find that the present and future public convenience and necessity require its grant.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-94-015 IS GRANTED and EMI is authorized to provide facsimile, data, and international message telephone services between the United States and Canada on a private line resale basis via previously authorized facilities.[1]

3. IT IS FURTHER ORDERED that neither EMI nor any persons or companies directly or indirectly controlling it or controlled by it, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which EMI or any such persons or companies controlling or controlled by EMI are parties.

4. IT IS FURTHER ORDERED that EMI shall file annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. §43.61.

5. IT IS FURTHER ORDERED that EMI shall file semi-annual reports of circuit additions, pursuant to Section 63.15(b) of the Commission's Rules, 47 C.F.R. §63.15(b).

6. IT IS FURTHER ORDERED that EMI shall file tariff provisions pursuant to Section 203 of the Communications Act, 47 U.S.C. §203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this Order.

7. IT IS FURTHER ORDERED that EMI shall file with the Commission a copy of any operating agreement entered into with its foreign correspondents within thirty (30) days of its execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. §43.51.

8. IT IS FURTHER ORDERED that EMI shall file all arrangements for private line interconnection to the United States public switched network, pursuant to Section 43.51(a) of the Commission's Rules, 47 C.F.R. §43.51(a).

9. IT IS FURTHER ORDERED that this Order may be subject to future modification pursuant to the outcome of the *Phase II Third Further Notice, fONOROLA/EMI Order (recon. pending)*, and any related proceedings.

10. IT IS FURTHER ORDERED that grant of this authorization is conditioned upon Canada's continuing to afford resale opportunities equivalent to those afforded under U.S. law.

11. IT IS FURTHER ORDERED that nothing in this authorization should be construed to include authorization for the transmission of money in connection with the services that EMI seeks authority to provide. The transmission of money is not considered to be a common carrier service.

12. This Order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within thirty (30) days of the public notice of this Order (See Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities
Division
Common Carrier Bureau

[1] *See EMI Communications Corporation*, 7 FCC Rcd. 7312 (1992).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-247

In the Matter of

Amendment of Section 73.202(b), RM-8328
Table of Allotments,
FM Broadcast Stations.
(Pauls Valley, Oklahoma)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 25, 1994; Released: February 9, 1994

By the Acting Chief, Allocations Branch:

1. At the request of Washita Broadcasting, Inc. ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 8 FCC Rcd 7071 (1993), proposing the substitution of Channel 249C3 for Channel 249A at Pauls Valley, Oklahoma, and the modification of Station KGOK's license to specify operation on the higher class channel. Petitioner filed comments reiterating its intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by substituting Channel 249C3 for Channel 249A at Pauls Valley since it could provide the community with a wide coverage area FM service and enable Station KGOK to expand its service area. As proposed, we will also modify Station KGOK's license to specify operation on Channel 249C3.

Technical Summary

3. Channel 249C3 can be allotted to Pauls Valley in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.5 kilometers (3.4 miles) southwest to accommodate petitioner's desired transmitter site.[1] We recognize that Channel 249C3 at Pauls Valley is short-spaced to the present operation of Station KTNT-FM, Channel 249A, Edmond, Oklahoma. However, Station KTNT-FM's license has been modified to Channel 250A pursuant to the *Report and Order* in MM Docket No. 92-53, 7 FCC Rcd 7533 (1992), and an application to implement the modification is pending (BPH-930601IE). Therefore, licensing of Station KGOK on Channel 249C3 may not be finalized until Station KTNT-FM is authorized to operate on Channel 250A.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective April 4, 1994, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Pauls Valley, Oklahoma	249C3

5. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Washita Broadcasting, Inc., for Station KGOK, Pauls Valley, Oklahoma, IS MODIFIED to specify operation on Channel 249C3, in lieu of Channel 249A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

6. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Washita Broadcasting, Inc., licensee of Station KGOK, is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and/or upgrade.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 249C3 at Pauls Valley are North Latitude 34-42-14 and West Longitude 97-15-46.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-6

In the Matter of

Amendment of Section 73.202(b), RM-8410
Table of Allotments,
FM Broadcast Stations.
(The Dalles, Oregon)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 25, 1994; Released: February 9, 1994

Comment Date: April 4, 1994
Reply Comment Date: April 19, 1994

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Larson-Wynn, Inc. ("petitioner") requesting the allotment of Channel 224C3 to The Dalles, Oregon, as the community's third local FM transmission service. Petitioner states that it will apply for the channel, if allotted.[1]

2. We believe the public interest would be served by proposing the allotment of Channel 224C3 to The Dalles since an interest has been expressed in providing the community with an additional local FM service. Channel 224C3 can be allotted to the community in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[2]

3. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
The Dalles, Oregon	249C2, 283CB	224C3, 249C2, 283C

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **April 4, 1994**, and reply comments on or before **April 19, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Elwyn T. Wynn, President
Larson-Wynn, Inc.
Radio Station KODL-AM
P.O. Box 741
The Dalles, Oregon 97058
(Petitioner)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

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[1] Although the petitioner's request was signed, it failed to include an affidavit verifying that the statements contained in the petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.420(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. *See also Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3910, n.41 (1990). The petitioner is requested to rectify this omission in its comments.

[2] The coordinates for Channel 224C3 at The Dalles are North Latitude 45-35-42 and West Longitude 121-10-24.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-258

In the Matter of

Amendment of Section 73.202(b), RM-8253
Table of Allotments,
FM Broadcast Stations
(Hawaiian Ocean View Estates,
and Ocean View, Hawaii)[1]

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 24, 1994; Released: February 9, 1994

By the Acting Chief, Allocations Branch:

1. Pursuant to the request of James Stonecipher ("petitioner"), the Commission has before it for consideration the *Notice of Proposed Rule Making* ("Notice"), 8 FCC Rcd 7095 (1993), proposing the allotment of Channel 273A to Hawaiian Ocean View Estates, Hawaii, as the community's first local FM service. In response to the *Notice*, Betty Adalsteinsson ("Adalsteinsson") filed a counterproposal seeking the allotment of Channel 273A to Ocean View, Hawaii. No other comments were received.[2]

2. Adalsteinsson, in her counterproposal states that Ocean View is a community composed of residential and business areas known as "Hawaiian Ocean View Estates. The Ranchos, Kula Kai Estates, Kaluaokeli iwa'a, Kona Gardens, and Kahuku Ranch." Adalsteinsson notes that the area has its own volunteer fire department, girl scout troupe, community center, shopping mall, and business association. Adalsteinsson states that Ocean View is in the process of being assigned its own Zip Code. Therefore, Adalsteinsson contends that Ocean View is a distinct area upon the Island of Hawaii, and regarded as a distinct community by the residential and business community of Ocean View.

3. Based upon the showing submitted by Adalsteinsson, we do not believe that Ocean View is a "community" for allotment purposes. The Commission's long standing policy is to allot channels to communities composed of geographically identifiable population groupings.[3] This requirement is generally satisfied if the proposed community is either incorporated or listed in the U.S. Census. Here, Ocean View is not listed in the Rand McNally Commercial Atlas nor is it incorporated or listed in the U.S. Census. In this regard, the Commission has stated that mere geographical location is not sufficient to establish "community status." It also appears that there is no local government in Ocean View. Adalsteinsson has submitted that there are some local businesses, however, she has not shown that these entities are intended to serve Ocean View as opposed to other areas. In the past, the Commission has rejected claims of community status where a connection has not been shown between political, social and commercial organizations and the community in question. *See Stock Island, Florida*, 8 FCC Rcd 343 (1993); *Gretna, Marianna, Quincy and Tallahassee, Florida*, 6 FCC Rcd 633 (1991) and cases cited therein. Nor has Adalsteinsson provided testimony of local residents attesting to Ocean View's community status. *See Memorandum Opinion and Order (Semora, North Carolina)*, 5 FCC Rcd 934 (1990). Adalsteinsson also states that Ocean View will be receiving its own zip code. However, she has not provided any information as to the importance of the zip code at Ocean View. The Commission has stated that the presence of a post office and a zip code is not sufficient to establish community status. *See Hannibal, Ohio*, 6 FCC Rcd 2144 (1991). We believe that the record in this proceeding is insufficient to find that Ocean View is a community for allotment purposes. Therefore, we will not allot Channel 273A to Ocean View, Hawaii.

4. IT IS FURTHER ORDERED, That the petition for rule making filed by James Stonecipher requesting the allotment of Channel 273A to Hawaiian Ocean View Estates, Hawaii (RM-8253) IS DISMISSED.

5. IT IS FURTHER ORDERED, That the counterproposal filed by Betty Adalsteinsson seeking the allotment of Channel 273A to Ocean View, Hawaii, IS DENIED.

6. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

7. For further information concerning this proceeding, contact Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The community Ocean View, Hawaii, has been added to the caption.

[2] It is Commission policy to refrain from making an allotment to a community absent an expression of interest. Therefore, since there has been no expression of interest in the allotment of Channel 273A to Hawaiian Ocean View Estates, we will dismiss the petitioner's proposal. Although, we will dismiss petitioner's proposal due to no expression of interest, we have also determined that Hawaiian Ocean View Estates is not a community for allotment purposes. Hawaiian Ocean View Estates is not listed in the Rand McNally Commercial Atlas nor is it listed in the U.S. Census. Petitioner submitted information stating that Hawaiian Ocean View Estates is a distinct area upon the Island of Hawaii. We note that mere geographical location is not sufficient to establish "community" status. *See Vimville, Mississippi*, 48 FR 5974 (1983), *Hannibal, Ohio*, 6 FCC Rcd 2144 (1991), and *Columbia, California*, 6 FCC Rcd 3292 (1991). Petitioner also alleged that there are some local businesses, however, he did not specifically show that they were intended to serve Hawaiian Ocean View Estates, as opposed to other areas. *See Notice*, supra.

[3] *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88, 101 (1982).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-315

In the Matter of

Amendment of Section 73.202(b), RM-8320
Table of Allotments,
FM Broadcast Stations.
(Huntsville, Missouri and
Pella, Iowa)[1]

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 24, 1994; Released: February 9, 1994

By the Acting Chief, Allocations Branch:

1. At the request of Contemporary Broadcasting, Inc. ("Contemporary"), the Commission has before it for consideration the *Notice of Proposed Rule Making* adopted December 13, 1993, proposing the substitution of Channel 278C1 for Channel 278C2 at Huntsville, Missouri. Contemporary also requested modification of its construction permit for Station KTDI, Channel 278C2, to specify operation on Channel 278C1. Petitioner filed a request to hold petition for rule making in abeyance on December 22, 1993 and on January 5, 1994, filed a request for rescission of the *Notice of Proposed Rule Making*.

2. Subsequent to the filing of its petition for rule making, the Commission amended its Rules to permit upgrades of FM stations by a one-step application process. *See FM Channel & Class Modification by Application*, 58 FR 38534, July 19, 1993. Although not required, a petitioner who has submitted a proposal, that upon the effective date of the new rules, could be advanced in the form of an application, will be permitted to withdraw its rule making petition and resubmit its proposal in the form of an application. On December 9, 1993, Contemporary filed an application seeking to take advantage of the Commission's new Rules permitting an upgrade in facilities by the application process (BMPH-931209ID).[2]

3. In accordance with Commission policy, we will grant Contemporary's request for recision of the *Notice of Proposed Rule Making* but deny its request to hold the petition for rule making in abeyance.

4. Accordingly, IT IS ORDERED, That the petition for rule making filed by Contemporary Broadcasting, Inc. to substitute Channel 278C1 for Channel 278C2 at Huntsville, Missouri, IS DISMISSED.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The community of Pella, Iowa, has been added to the caption. Channel 278C1 at Huntsville is short spaced to Channel 277C at Pella. Station KFMG(FM), Pella, was previously authorized to operate on Channel 277C. Its license was subsequently downgraded to Class C1 status by an application granted November 19, 1993, at a site that is fully spaced to Channel 278C1 at Huntsville. However, Section 73.202(b) of the Rules, the FM Table of Allotments has not been editorially amended to reflect the downgrading of Channel 277 at Pella. Therefore, we will make the change in the FM Table of Allotments in the context of this proceeding. Since the change is editorial in nature, a public notice and comment proceeding is unnecessary. *See* 5 U.S.C. 553(b)(A) and (B).

[2] The application was put on public notice on December 23, 1993.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-7

In the Matter of

Amendment of Section 73.606(b), RM-8425
Table of Allotments,
FM Broadcast Stations.
(Eagle River, Wisconsin)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 26, 1994; Released: February 9, 1994

Comment Date: April 4, 1994
Reply Comment Date: April 19, 1994

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Lyle Robert Evans d/b/a Eagle River Television Company ("petitioner"), requesting the allotment of UHF Television Channel 34 to Eagle River, Wisconsin, as that community's first local television service. Petitioner provides information in support of the proposal and states its intention to apply for the channel, if allotted.

2. Eagle River (population 1,374),[1] in Vilas County (population 17,707), is located in northeastern Wisconsin, approximately 180 kilometers (110 miles) northwest of Green Bay, Wisconsin.

3. A staff engineering analysis of the proposal indicates that UHF Television Channel 34 can be allotted to Eagle River, Wisconsin, consistent with the minimum distance separation requirements of section 73.610 of the Commission's Rules without a site restriction.[2] Although the Commission has imposed a temporary freeze on new television allotments in certain metropolitan areas, the proposed allotment at Eagle River is not affected thereby. *See Notice of Inquiry*, 2 FCC Rcd 2125 (1987) and *Order*, 52 FR 28346, July 29, 1987. Since Eagle River is located within 400 kilometers (250 miles) of the U.S.-Canadian border, concurrence of the Canadian government will be obtained for this proposal.

4. We believe the public interest would be served by proposing the allotment of Channel 34 to Eagle River, Wisconsin, since it could provide the community with its first local television service. Accordingly, we seek comments on the proposed amendment of the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Eagle River, Wisconsin	---	34

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **April 4, 1994**, and reply comments on or before **April 19, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Lyle R. Evans
Eagle River Television Company
1296 Marian Lane
Green Bay, Wisconsin 54304

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

[1] Population figures are taken from the 1990 U.S. Census.
[2] The coordinates for Channel 34 at Eagle River are 45-55-00 and 89-14-42.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-8

In the Matter of

Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (Ola, Arkansas) — RM-8412

NOTICE OF PROPOSED RULE MAKING

Adopted: January 27, 1994; Released: February 9, 1994

Comment Date: April 4, 1994
Reply Comment Date: April 19, 1994

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of Yell County Broadcasting ("petitioner") requesting the allotment of FM Channel 267A to Ola, Arkansas, as that community's first local aural transmission service. Petitioner failed to state an intention to apply for Channel 267A if is allotted to Ola, and is requested to do so in its comments in response to the *Notice*.

Technical Statement

2. A staff review of the proposal reveals that Channel 267A can be allotted to Ola, Arkansas, consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules, provided the transmitter is located at least 1.8 kilometers (1.1 miles) south of the community at coordinates North Latitude 35-01-02 and West Longitude 93-13-34, to avoid short-spacing the licensed site of Station KCJC(FM), Channel 265A, Russellville, Arkansas, at coordinates North Latitude 35-17-37 and West Longitude 93-10-39.

3. We believe the public interest would be served by proposing the allotment of Channel 267A to Ola, Arkansas, since an interest has been expressed in providing a first local aural transmission service to that community. Therefore, we will seek comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, to include Ola, Arkansas, as follows:

	Channel No.	
City	Present	Proposed
Ola, Arkansas	--	267A

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before **April 4, 1994**, and reply comments on or before **April 19, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Dan J. Alpert, Esq.
Law Offices of Dan J. Alpert
1250 Connecticut Avenue, N.W.
#700
Washington, D.C. 20036

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-9

In the Matter of

Amendment of Section 73.202(b), RM-8423
Table of Allotments,
FM Broadcast Stations.
(Tunica, Mississippi)

NOTICE OF PROPOSED RULE MAKING

Adopted: January 27, 1994; Released: February 9, 1994

Comment Date: April 4, 1994
Reply Comment Date: April 19, 1994

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Tunica Broadcasting ("petitioner), requesting the allotment of Channel 241C3 to Tunica, Mississippi, as the community's first local FM service. Petitioner states that it will apply for the channel, if allotted.

2. In support of its proposal, petitioner states Tunica is an incorporated city listed in the 1990 U.S. Census with a city population of 1,175 persons and county population is 8,164 persons. In addition, Tunica is the county seat of Tunica County, Mississippi. Petitioner contends that there are no broadcast stations licensed to serve Tunica, thereby its proposal will provide Tunica with its first aural transmission service.

3. We believe the public interest would be served by proposing the allotment of Channel 241C3 to Tunica, since it could provide the community with its first local FM service. Channel 241C3 can be allotted to Tunica in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.8 kilometers (4.2 miles) southwest in order to avoid short-spacing conflicts with Station WLZA-FM, Channel 241C2, Eupora, Mississippi, and with a rule making proposal (RM-8336) to allot Channel 240C3 at Harrisburg, Arkansas.[1]

4. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
City	Present	Proposed
Tunica, Mississippi	--	241C3

5. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

6. Interested parties may file comments on or before **April 4, 1994**, and reply comments on or before **April 19, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Barbara L. Waite, Esq.
Venable, Baetjer, Howard & Civiletti
Suite 1000
1201 New York Avenue, NW
Washington, D.C. 20005
(Counsel for petitioner)

7. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. *See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

8. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202)634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

[1] The coordinates for Channel 241C3 are North Latitude 34-38-56 and West Longitude 90-26-39.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-188

In the Matter of

Amendment of Section 73.202(b), RM-8278
Table of Allotments,
FM Broadcast Stations.
(Westbrook, Maine)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 27, 1994; Released: February 9, 1994

By the Acting Chief, Allocations Branch:

1. At the request of Buckley Broadcasting Corporation of Maine ("Buckley").[1] the Commission has before it for consideration the *Notice of Proposed Rule Making*, 8 FCC Rcd 4747 (1993), proposing the substitution of Channel 265B1 for Channel 265A at Westbrook, Maine. Buckley also requested modification of its license for Station WYZM-FM,[2] Channel 265A, to specify operation on Channel 265B1. Saga Communications of New England, Inc. ("Saga") filed comments in response to the *Notice*. On January 12, 1994, Saga filed a request for withdrawal of the *Notice of Proposed Rule Making*.

2. Subsequent to the filing of its petition for rule making, the Commission amended its Rules to permit upgrades of FM stations by a one-step application process. *See FM Channel & Class Modification by Application*, 58 FR 38534, July 19, 1993. Although not required, a petitioner who has submitted a proposal, that upon the effective date of the new rules, could be advanced in the form of an application, will be permitted to withdraw its rule making petition and resubmit its proposal in the form of an application. On August 18, 1993, Saga filed an application seeking to take advantage of the Commission's new Rules permitting an upgrade in facilities by the application process (BPH-930818IC).

3. In accordance with Commission policy, we will grant Saga's request for withdrawal of the *Notice of Proposed Rule Making*.[3]

4. Accordingly, IT IS ORDERED, That the petition for rule making filed by Saga Communications of New England, Inc. to substitute Channel 265B1 for Channel 265A at Westbrook, Maine, IS DISMISSED.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] An assignment of license from Buckley Broadcasting Corporation of Maine to Saga Communications of New England, Inc. was granted on June 23, 1993 and consummated on July 8, 1993 (BALH-930504GF).

[2] On August 11, 1993, the Commission modified the call sign of Station WYNZ-FM to "WYNZ."

[3] In accordance with Section 1.420(j) of the Commission's Rules, Saga states that it received no consideration in exchange for withdrawing its expression of interest.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-30

In the Matter of

Amendment of Section 73.202(b), RM-8171
Table of Allotments,
FM Broadcast Stations.
(South Hill, Virginia)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 2, 1994; Released: February 14, 1994

By the Acting Chief, Allocations Branch:

1. At the request of Old Belt Broadcasting Corporation ("petitioner"), licensee of Station WSHV-FM, Channel 255A, South Hill, Virginia, the Commission has before it the *Notice of Proposed Rule Making*, 8 FCC Rcd 1379 (1993), proposing the substitution of Channel 255C3 for Channel 255A at South Hill and modification of petitioner's license for Station WSHV-FM to specify operation on the higher power channel. Petitioner filed comments restating its interest to apply for Channel 255C3, if allotted. No other comments were received.

2. We believe the public interest would be served by substituting Channel 255C3 for Channel 255A at South Hill, since it could provide the community with a wide coverage FM service. Channel 255C3 can be allotted to South Hill in compliance with the Commission's minimum distance separation requirements with site restriction of 8.6 kilometers (5.3 miles) north to accommodate petitioner's desired site.[1] As proposed, we will also modify Station WSHV-FM's authorization to specify operation on Channel 255C3 in accordance with Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 28, 1994,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
South Hill, Virginia	255C3

4. IT IS FURTHER ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, that the license of Old Belt Broadcasting Corporation for Station WSHV-FM, South Hill, Virginia, IS MODIFIED to specify operation on Channel 255C3, in lieu of Channel 255A, subject to the following conditions:

(a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301).

(b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620.

(c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

5. Pursuant to Commission Rule Section 1.1104(1(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Old Belt Broadcasting Corporation, licensee of Station WSHV-FM, is required to submit a rule making fee in addition to the fee required for the applications to effect the change in community of license and/or upgrade.

6. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this *Report and Order* by Certified Mail, Return Receipt Requested, to William Carlton Link, Route 1, Box 16, Highway 58 E, Lawrenceville, Virginia 23868 (permittee of Station WHFD-FM).

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 255C3 at South Hill are North Latitude 36-48-11 and West Longitude 78-08-45. We recognize that the allotment of Channel 255C3 is short-spaced to Station WHFD-FM, Channel 255A, Lawrenceville, Virginia. However, Station WHFD-FM was modified effective January 15, 1993, to specify operation on Channel 288A, in MM Docket No. 92-128. *See* 7 FCC Rcd 7843 (1992). We will serve a copy of this *Report and Order* on the permittee of Station WHFD-FM.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-208

In the Matter of

Amendment of Section 73.202(b),	RM-8281
Table of Allotments,	RM-8346
FM Broadcast Stations.	RM-8347
(Keno, Bonanza, Merrill, Malin	RM-8348
and Lakeview, Oregon)[1]	RM-8349

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 31, 1994; Released: February 14, 1994

By the Acting Chief, Allocations Branch:

1. At the request of Brett E. Miller ("Miller"), the Commission has before it the *Notice of Proposed Rule Making*, 8 FCC Rcd 4930 (1993), proposing the allotment of Channel 253A to Keno, Oregon, as the community's first local FM service. Petitioner filed comments reiterating his intention to apply for the channel, if allotted.[2] Counterproposals were filed by Goldrush Broadcasting ("Goldrush"), Big Tree Broadcasting ("Big Tree"), The Jesuit Mission ("Jesuit Mission") and Contour Communications ("Contour").[3]

2. In the *Notice*, Miller was requested to furnish sufficient information to support a finding that Keno is a community for allotment purposes since it is not listed in the U.S. Census. In response, petitioner states that Keno is not incorporated but is listed in the U.S. Census Bureau as a Census County Division ("CCD") with a population of 2,550 persons. It goes on to state that Keno is identified as a community on various maps and atlases, including the AAA Road Atlas, aeronautical charts and United States Geological Survey maps. Further, it points out that Keno has its own post office, fire department and a number of businesses and churches, several of which identify themselves with the community of Keno, such as the Keno Bakery, Keno Garage, Keno Realty, Keno Rock Products, Keno Grocery Store, Keno Water Company, Maria's of Keno, Keno Christian Church and Keno Open Bible Community Church.

3. Four counterproposals to the allotment of Channel 253A at Keno were received. Goldrush requests the allotment of Channel 253A to the incorporated city of Bonanza, Oregon, as its first local FM service (RM-8346). Big Tree seeks the allotment of Channel 253A to the incorporated community of Merrill, Oregon, as its first local FM service (RM-8347). Jesuit Mission seeks the allotment of Channel 253A to the incorporated community of Malin, Oregon, as its first local FM service (RM-8348). Contour requests the allotment of Channel 253C2 to Lakeview, Oregon, as its second local FM service (RM-8349). Each of the proponents has stated its intention to apply for their respective channels, if allotted. All of the proposals under consideration herein are mutually exclusive with each other as none of the communities are 115 kilometers apart as required for co-channel Class A allotments.

4. After reviewing the pleadings before us, we believe the public interest would be served by providing Keno, Bonanza, Merrill and Malin with their first local FM transmission services and Lakeview with its first competitive FM transmission service. We also find that Miller has provided sufficient evidence that Keno qualifies as a community for allotment purposes. It has its own post office and fire department as well as religious institutions and businesses which identify themselves with Keno. Further, a staff engineering study shows that all of the requests can be accommodated since alternate channels are available for each of the communities for which counterproposals were filed.

Technical Summary

5. Channel 253A can be allotted to Keno in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 42-07-30; 121-55-42. Channel 237C2 can be allotted to Lakeview without the imposition of a site restriction, at coordinates 42-11-24; 120-21-00. Channel 275A can be allotted to Bonanza without the imposition of a site restriction, at coordinates 42-12-00; 121-24-00. Channel 289A can be allotted to Merrill without the imposition of a site restriction, at coordinates 42-01-24; 121-36-00. Channel 263A can be allotted to Malin without the imposition of a site restriction, at coordinates 42-00-36; 121-24-24.

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 28, 1994,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Bonanza, Oregon	275A
Keno, Oregon	253A
Lakeview, Oregon	228C3, 237C2
Malin, Oregon	263A
Merrill, Oregon	289A

7. The window period for filing applications will open on March 29, 1994, and close on **April 28, 1994**.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

[1] The communities of Bonanza, Merrill, Malin and Lakeview have been added to the caption.

[2] In the *Notice* it was stated that the petitioner had failed to comply with Section 1.52 of the Commission's rules because an affidavit verifying that the statements contained in his petition were accurate to the best of his knowledge was not included in the petition. He has corrected this omission in his comments.

[3] Public Notice of the filing of the counterproposals was given on September 27, 1993, Report No. 1972.

9. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-238

In the Matter of

Amendment of Section 73.202(b), RM-8305
Table of Allotments,
FM Broadcast Stations.
(Templeton, California)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 31, 1994; Released: February 14, 1994

By the Acting Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 8 FCC Rcd 6198 (1993), issued in response to a petition filed by Radio Representatives, Inc. ("petitioner"), proposing the allotment of Channel 263A to Templeton, California, as that community's first local FM service.[1] Petitioner filed comments in response to the *Notice*.[2] No other comments were received.

2. We believe the public interest would be served by allotting Channel 263A to Templeton, California, since it could provide a first local FM service to the community.

Technical Statement

3. As indicated in the *Notice*, Channel 263A can be allotted to Templeton in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules, provided the transmitter is located at least 3.3 kilometers (2 miles) north of the community at coordinates 35-34-45 and 120-42-41. The site restriction is required to avoid a short-spacing to the licensed site of Station KRQK(FM), Channel 262B1, Lompoc, California, at coordinates 34-44-30 and 120-26-45.

4. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 28, 1994,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to the community listed below, as follows:

City	Channel No.
Templeton, California	263A

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. The window period for filing applications on Channel 263A at Templeton, California, will open on **March 29, 1994,** and close on **April 28, 1994.**

7. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the application filing process for Channel 263A at Templeton, California, should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] As stated in the *Notice*, a construction permit has been issued to William L. Zawilla to operate daytime Station KXER(AM) at Templeton (File No. BP-851126AF).

[2] The *Notice* observed that the petitioner's request, although signed and an address provided, was not verified, as required by Section 1.52 of the Commission's Rules. Petitioner was requested to correct the deficiency in its responsive comments, and has complied accordingly.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-184

In the Matter of

Amendment of Section 73.202(b), RM-8277
Table of Allotments,
FM Broadcast Stations.
(Norlina, North Carolina)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 31, 1994; Released: February 14, 1994

By the Acting Chief, Allocations Branch:

1. At the request of Robert Carver and Frank White, d/b/a Carver-White Broadcasting Company ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 8 FCC Rcd 4457 (1993), proposing the allotment of Channel 232A to Norlina, North Carolina, as the community's first local FM service. Petitioner filed comments reiterating its intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by allotting Channel 232A to Norlina since it could provide the community with its first local aural service. Channel 232A can be allotted to Norlina in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.3 kilometers (2.7 miles) north to avoid short-spacings to Stations WRQR, Channel 232A, Farmville, North Carolina, and WQDR, Channel 234C, Raleigh, North Carolina.[1]

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 28, 1994,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Norlina, North Carolina	232A

4. The window period for filing applications will open on **March 29, 1994,** and close on **April 28, 1994**.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 232A at Norlina are North Latitude 36-29-02 and West Longitude 78-11-23.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-237

In the Matter of

Amendment of Section 73.202(b). RM-8312
Table of Allotments.
FM Broadcast Stations.
(Jeffersonville, New York)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 31, 1994; Released: February 14, 1994

By the Acting Chief, Allocations Branch:

1. At the request of Michael S. Celenza ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 8 FCC Rcd 6196 (1993), proposing the allotment of Channel 271A to Jeffersonville, New York, as the community's second local commercial FM service. Petitioner filed comments reiterating his intention to apply for the channel, if allotted. No other comments were received.

2. We believe the public interest would be served by allotting Channel 271A to Jeffersonville since it could provide the community with its first competitive commercial FM service. Channel 271A can be allotted to Jeffersonville in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction.[1] Canadian concurrence in the allotment has been received since Jeffersonville is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 28, 1994,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Jeffersonville, New York	271A, 291A

4. The window period for filing applications will open on **March 29, 1994,** and close on **April 28, 1994**.

5. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

6. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 271A at Jeffersonville are North Latitude 41-46-51 and West Longitude 74-56-03.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-217

In the Matter of

Amendment of Section 73.202(b), RM-8286
Table of Allotments,
FM Broadcast Stations.
(Grand Gorge, New York)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 31, 1994; Released: February 14, 1994

By the Acting Chief, Allocations Branch:

1. At the request of Sound of Life, Inc. ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 8 FCC Rcd 5128 (1993), proposing the allotment of Channel 287A to Grand Gorge, New York, as the community's first local service. Petitioner filed comments and reply comments. No other comments were received.

2. In the *Notice*, petitioner was requested to furnish sufficient information to support a finding that Grand Gorge is a community for allotment purposes since it is not listed in the U.S. Census and the petitioner, although stating that Grand Gorge had various indicia of community status, had failed to show a nexus between the political, social and commercial organizations and Grand Gorge itself. In response, petitioner has provided information showing that the NYNEX telephone directory lists the residents of, and businesses located in, Grand Gorge in a separate section and that there are a number of local businesses, some of which identify themselves with the community, such as the Grand Gorge Pharmacy, Grand Gorge Hardware, Grand Gorge Animal Hospital and the Grand Gorge Apartments. Further, the community has its own post office, zip code, sewage treatment plant, fire department, civic center and churches. In addition, petitioner has provided a declaration signed by several of the community's residents stating that "Grand Gorge is not simply a name on a map or a name to describe an area of dispersed rural population. We consider ourselves a community and, within the limitations of our size, we believe that we act as such."

3. Based on the record before us, we find that the petitioner has persuasively shown that Grand Gorge is a community for allotment purposes. There are both public and private institutions which identify themselves with the community of Grand Gorge as well as the statement provided that the residents believe Grand Gorge to be and function as a community. We therefore believe that the public interest would be served by allotting Channel 287A to Grand Gorge as its first local aural transmission service.

Technical Summary

4. Channel 287A can be allotted to Grand Gorge in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.2 kilometers (6.9 miles) northeast to avoid a short-spacing to Station WYCY, Channel 287A, Hawley, Pennsylvania.[1] Canadian concurrence in the allotment has been received since Grand Gorge is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

5. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 28, 1994,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Grand Gorge, New York	287A

6. The window period for filing applications will open on **March 29, 1994,** and close on **April 28, 1994**.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning this proceeding, contact Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The coordinates for Channel 287A at Grand Gorge are North Latitude 42-26-39 and West Longitude 74-24-54.

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-213

In the Matter of

Amendment of Section 73.202(b),	RM-7214
Table of Allotments,	RM-8351
FM Broadcast Stations.	
(Menomonie and Balsam Lake,	
Wisconsin)[1]	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: January 31, 1994; Released: February 14, 1994

By the Acting Chief, Allocations Branch:

1. At the request of Jay Lellman ("petitioner"), the Commission has before it the *Notice of Proposed Rule Making*, 8 FCC Rcd 4936 (1993), proposing the allotment of Channel 285A to Menomonie, Wisconsin.[2] Yvonne L. Baum-Olson ("Baum-Olson") filed a counterproposal requesting the allotment of Channel 285C3 to Balsam Lake, Wisconsin.[3] Baum-Olson also filed comments and reply comments.

2. In her counterproposal, Baum-Olson requests the allotment of Channel 285C3 to Balsam Lake, as the community's first local aural transmission service. In support of her proposal, Baum-Olson states the 1990 U.S. Census recognizes the Village of Balsam Lake as an incorporated place with a population of 792 persons. Baum-Olson submits that Balsam Lake is the county seat of Polk County and has an independent local government. Further, she notes that the community has its own police and fire departments, as well as municipal water and sewage systems. Baum-Olson states she will apply for Channel 285C3, if allotted to Balsam Lake.

3. Although petitioner's proposal was accepted for rule making, he has failed to file comments restating his interest to apply for Channel 285A , if allotted to Menomonie. As stated in the *Notice*, a showing of continuing interest is required before a channel will be allotted. It is the Commission's policy to refrain from making an allotment to a community absent an expression of interest. In this instance, the petitioner expressed no such interest in pursuing the proposed allotment of Channel 285A at Menomonie, Wisconsin. Therefore, since no such interest has been expressed, we shall dismiss petitioner's proposal to allot Channel 285A to Menomonie, Wisconsin. *See, e.g., Joshua Tree, California*, 54 FR 18557, May 1, 1989, *Senatobia, Mississippi*, 3 FCC Rcd 4000 (1988), and paragraph 2 of the Appendix of the *Notice*.

4. Since no further consideration is warranted regarding petitioner's proposal, we believe the public interest would be served by adopting Baum-Olson's counterproposal requesting the allotment of Channel 285C3 to Balsam Lake, since it could provide the community with its first local aural transmission service. Channel 285C3 can be allotted to Balsam Lake in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.7 kilometers (9.1 miles) east in order to avoid a short-spacing with Station KCLD-FM, Channel 284C, St. Cloud, Minnesota.[4]

5. Accordingly, pursuant to the authority contained in Sections 4(i),5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **March 28, 1994,** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

City	Channel No.
Balsam Lake, Wisconsin	285C3

6. The window period for filing applications will open on **March 29, 1994,** and close on **April 28, 1994**.

7. IT IS FURTHER ORDERED, That the petition for Rule Making filed by Jay Lellman (RM-7214), requesting the allotment of Channel 285A to Menomonie, Wisconsin, IS DISMISSED.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Pamela Blumenthal, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

[1] The community of Balsam Lake, Wisconsin, has been added to the caption.

[2] As stated in the *Notice*, Phillips Broadcasting Company, Inc., licensee of Stations WMEQ(AM) and WMEQ-FM, Menomonie, Wisconsin, filed an opposition to petitioner's proposal. This opposition need not be addressed, given our resolution of this proceeding.

[3] Public Notice of the counterproposal was given on September 27, 1993, (Report No. 1972).

[4] The coordinates for Channel 285C3 at Balsam Lake are North Latitude 45-26-05 and West Longitude 92-16-02.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: February 14, 1994

COMSAT MOBILE COMMUNICATIONS FILES ITS PROPOSED COST ALLOCATION MANUAL

PUBLIC COMMENT INVITED

On January 13, 1994, COMSAT Mobile Communications (CMC) filed its initial cost allocation manual (CAM). CMC filed this CAM in compliance with a Commission Order released March 2, 1993.[1] In this Order, the Commission directed CMC to develop non-structural safeguards to permit the elimination of structural separations for CMC's enhanced maritime service. Interested parties may file comments on the proposed CAM by **March 2, 1994**. Replies should be filed by **March 17, 1994**. Comments should reference AAD 94-24. A copy of each pleading should be sent to Debbie Weber, FCC, Common Carrier Bureau, 2000 L St., N.W., and to Jennifer Manner, FCC Common Carrier Bureau, 1919 M St., N.W., Room 534. A copy should also be sent to the International Transcription Service (ITS), 2100 M St., N.W., Suite 140, Washington, D.C. 20037, (202) 857-3800. Copies are available for public inspection and copying in the Accounting and Audits Division public reference room, 2000 L Street, N.W., Room 812, Washington, D.C. Copies are also available from ITS.

For further information contact Debbie Weber at (202) 634-1861.

FEDERAL COMMUNICATIONS COMMISSION

[1] *Communications Satellite Corporation*, 8 FCC Rcd 1531 (1993).

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 94-5

In the Matter of

Amendment of Section 73.202(b),	RM-8420
Table of Allotments,	
FM Broadcast Stations.	
(Olivia and Sauk Rapids,	
Minnesota)	

NOTICE OF PROPOSED RULE MAKING AND ORDER TO SHOW CAUSE

Adopted: January 14, 1994; Released: February 10, 1994

Comment Date: April 4, 1994
Reply Comment Date: April 19, 1994

By the Acting Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Tri-County Broadcasting, Inc. ("petitioner"), requesting the substitution of Channel 269C2 for Channel 269A at Sauk Rapids, Minnesota. Petitioner also requests modification of its license for station WHMH(FM), Channel 269A, to specify operation on Channel 269C2. Petitioner provided an engineering study in support of the proposal and indicated it would apply for the channel, if allotted.

2. We believe petitioner's proposal warrants consideration because the proposed substitution would provide Sauk Rapids with expanded reception service. Channel 269C2 can be allotted to Sauk Rapids, Minnesota, in compliance with the minimum distance separation requirements of the Commission's Rules provided Channel 261A is substituted for Channel 269A at Olivia, Minnesota.[1] The proposed substitution at Olivia can be accomplished in compliance with the minimum distance separation requirements of the Commission's Rules at the current site of Station KOLV.[2] We shall also propose to modify the license for station WHMH(FM) to specify operation on Channel 269C2 in accordance with Section 1.420(g) of the Commission's Rules.

3. Whenever an existing licensee is ordered to switch frequencies in order to accommodate a new channel allotment, we require the proponent of a new allotment to make a commitment that it would reimburse the affected station for the costs incurred in changing frequencies. Petitioner has acknowledged its responsibility to reimburse Station KOLV, Olivia, Minnesota, for the reasonable costs in changing frequency.

4. In view of the above, we believe the public interest would be served by proposing the allotment of Channel 269C2 to Sauk Rapids, Minnesota, since it would provide the community with expanded reception service. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the community listed below, to read as follows:

	Channel No.	
Community	Present	Proposed
Olivia, Minnesota	269A	261A
Sauk Rapids, Minnesota	269A	269C2

5. IT IS ORDERED, pursuant to Section 316(a) of the Communications Act of 1934, as amended, Olivia Broadcasting Company, the licensee of Station KOVL, Olivia, Minnesota, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 261A in lieu of Channel 269A.

6. Pursuant to Section 1.87 of the Commission's Rules, Olivia Broadcasting Company, may not later than April 5, 1994, file a written statement showing with particularity why its license should not be modified as proposed in the *Order to Show Cause*. The Commission may call on Olivia Broadcasting Company to furnish additional information. If Olivia Broadcasting Company raises a substantial and material question of fact, a hearing may be required to resolve such a question pursuant to Section 1.87. Upon review of the statements and/or additional information furnished, the Commission may grant the modification, deny the modification, or set the matter of modification for hearing. If no written statement is filed by the date referred to above, Olivia Broadcasting Company will be deemed to have consented to the modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the above-mentioned channel modification is ultimately found to be in the public interest.

7. IT IS FURTHER ORDERED, That the Secretary Shall Send by Certified Mail, Return Receipt Requested, a copy of this *Notice of Proposed Rule Making and Order to Show Cause* to the following:

George S. Blum, President
Olivia Broadcasting Company
907 West Lincoln, Hwy. 212
P.O. Box 6
Olivia, Minnesota 56277

[1] The coordinates for Channel 269C2 at Sauk Rapids are 45-32-00 North Latitude and 94-17-00 West Longitude.
[2] The coordinates for Channel 261A at Olivia are 44-45-51 North Latitude and 94-55-45 West Longitude.

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before **April 4, 1994,** and reply comments on or before **April 19, 1994,** and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner as follows:

Tri-County Broadcasting, Inc.

P.O. Box 366

Sauk Rapids, Minnesota 56379

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (*See* Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (*See* Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters. 1919 M Street N.W., Washington, D.C.

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 93-162

In the Matter of

Local Exchange Carriers' Rates,
Terms, and Conditions for
Expanded Interconnection for
Special Access

Pacific Bell Transmittal No. 1673
Revisions to Tariff F.C.C. No. 128

MEMORANDUM OPINION AND ORDER

Adopted: February 3, 1994; Released: February 3, 1994

By the Chief, Tariff Division, Common Carrier Bureau:

1. On December 21, 1993, Pacific Bell filed Transmittal No. 1673 to add low speed service to the special access cross connection service provided under its expanded interconnection tariff. Transmittal 1673 is scheduled to take effect on February 4, 1994.

2. This transmittal raises the same issues regarding cost allocations, rate levels, rate structures, and terms and conditions of service as those identified in the *Expanded Interconnection Order*.[1] Therefore, Transmittal No. 1673 is suspended for one day until February 5, 1994, and will be subject to the investigation initiated in the *Expanded Interconnection Tariff Order*. These rates will also be subject to an accounting order to facilitate any refunds that may later prove necessary.

3. Accordingly, IT IS ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the revisions to Pacific Bell Tariff F.C.C. No. 128, Transmittal No. 1673, ARE SUSPENDED for one day and an investigation of the referenced tariff transmittal IS INSTITUTED.

4. IT IS FURTHER ORDERED that Pacific Bell SHALL FILE tariff revisions within five business days from the release date of this order to reflect this suspension.

5. IT IS FURTHER ORDERED that, for these purposes, we waive Sections 61.56, 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.56, 61.58, and 61.59. Pacific Bell should cite the "DA" number of the instant Order as the authority for this filing.

6. IT IS FURTHER ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. §204(a), Pacific Bell shall keep accurate account of all amounts received by reason of the rates that are the subject of this investigation.

FEDERAL COMMUNICATIONS COMMISSION

Gregory J. Vogt
Chief, Tariff Division
Common Carrier Bureau

[1] Ameritech Operating Companies, *et. al.* CC Docket No. 93-162, 8 FCC Rcd 4589 (Com. Car. Bur. 1993) (*Expanded Interconnection Tariff Order*).

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: February 2, 1994

NON-VOICE, NON-GEOSTATIONARY MOBILE SATELLITE SERVICE

Comment Date: March 4, 1994
Reply Date: March 21, 1994

Orbital Communications Corporation	File Nos. 9-DSS-LA-94 10-DSS-AMEND-94

Orbital Communications Corporations (ORBCOMM) has amended its pending application to construct a non-voice, non-geostationary (NVNG) mobile-satellite system. ORBCOMM has revised its satellite and satellite constellation designs to reflect its intended use of smaller space stations. The company now seeks to deploy eight satellites in each of four orbital planes, as well as two satellites in each of two high inclination planes. ORBCOMM has also revised its intended operating frequencies to align with a coordination agreement reached among the pending applicants in this proceeding, and has provided supplementary financial and regulatory information. In addition to the system amendments proposed, ORBCOMM now seeks authority to launch and operate its NVNG system. Comments or oppositions to ORBCOMM's amendment must be filed by March 4, 1994, and replies are due by March 21, 1994.

For further information, please contact Kristi Kendall at 202-634-7058, 2025 M Street, N.W., Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: February 7, 1994

Report No. DS-1395

REQUEST FOR DECLARATORY RULING OR WAIVER FILED BY SATELLITE CD RADIO, INC.

Comments or Oppositions: February 18, 1994
Replies: February 28, 1994

Satellite CD Radio, Inc. File No. 12-DSS-MISC-94

Satellite CD Radio, Inc. requests a declaratory ruling or grant of a waiver of 47 CFR 25.116 regarding its proposed public offering of 4,500,000 new shares of common stock in its parent Company, CD Radio, Inc. CD Radio requests that the Commission declare that this public offering of stock will not result in the assignment of a new file number to its pending application or in the loss of its "cut-off protection" with respect to the other pending applications for authorization in the Digital Audio Radio Service. Comments or oppositions regarding CD Radio's request must be filed on or before February 18, 1994 and replies are due February 28, 1994.

For further information, please contact Rosalee Chiara on (202) 634-1781 at 2025 M Street, N.W., Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: February 14, 1994

BELLSOUTH TELECOMMUNICATIONS, INC. FILES PETITION FOR WAIVER TO REALLOCATE INVESTMENT FROM COMMON TO REGULATED USE

PUBLIC COMMENT INVITED

On November 18, 1993, BellSouth Telecommunications, Inc. (BellSouth) filed a petition for waiver of Section 64.901(b)(4) of the Commission's rules, requesting approval to reallocate certain equipment from common cost pools to regulated cost pools. BellSouth claims that three of its voice mail systems that were projected for common use are needed to support its regulated operations.

The Commission's *Joint Cost Orders*[1] specify that absent a waiver, investment assigned to nonregulated use may not be reassigned to regulated use. In order to obtain a waiver, a carrier must submit a convincing showing that (1) its regulated activities require the use of plant capacity allocated to nonregulated activities, and (2) it cannot obtain the needed capacity elsewhere at a lower cost.

Parties may file comments on BellSouth's petition for waiver no later than **March 14, 1994**. Replies should be filed by **March 29, 1994**. Comments should reference AAD 94-22. A copy of each pleading should be sent to Debbie Weber, FCC, Common Carrier Bureau, 2000 L St., N.W., Room 812, Washington, D.C. 20554 and the International Transcription Service (ITS), 2100 M St., N.W., Suite 140, Washington, D.C. 20037, (202) 857-3800. Copies are available for public inspection and copying in the Accounting and Audits Division public reference room, 2000 L St., N.W., Suite 812, Washington, D.C. Copies are also available from ITS.

For further information contact Debbie Weber at (202) 634-1861.

FEDERAL COMMUNICATIONS COMMISSION

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[1] *Separation of Costs of Regulated Telephone Service from Costs of Nonregulated Activities, Report and Order*, CC Docket No. 86-111, 2 FCC Rcd 1298 (1987) (*Joint Cost Order*), *recon.*, 2 FCC Rcd 6283 (1987) (*Recon. Order*), *further recon.*, 3 FCC Rcd 6701 (1988) (*Further Recon. Order*), *aff'd sub nom.* Southwestern Bell Corp. v. FCC, 896 F.2d 1378 (D.C. Cir. 1990).

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
January 31, 1994

Released: February 16, 1994

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Angel F. Ginorio 8210-RS
Licensee of Low Power TV Station W28AH 92090317
P.O. Box 307
Humacao, Puerto Rico 00792

Dear Mr. Ginorio:

This letter constitutes a Notice of Apparent Liability for a forfeiture pursuant to Section 503(b) of the Communications Act of 1934, as amended, under authority delegated to the Chief of the Mass Media Bureau by Section 0.283 of the Commission's Rules.

A complaint filed with the Mass Media Bureau's Enforcement Division alleged that you had engaged in two unauthorized assignments of the construction permit/license of low power TV station W28AH, Arecibo, Puerto Rico, in violation of Section 310(d) of the Communications Act and Section 73.3540 of the Commission's Rules. The first such alleged assignment was to A.F.G. Broadcasting Corporation, and the second was to your son, Victor Ginorio.

On July 30, 1992, the Commission issued a letter of inquiry to you concerning the operations of the station. Your response of September 7, 1992, failed to answer the specific questions asked, or to produce the documentation requested in the letter of inquiry. Accordingly, a subsequent letter of inquiry was issued on November 23, 1992. You failed to respond to this subsequent letter of inquiry, and a warning letter was issued on April 29, 1993. You then responded to the supplemental letter of inquiry by a letter dated May 31, 1993.

Based on your responses to the Commission's inquiries, and other information obtained by the Commission, it appears that you did engage in two unauthorized changes in ownership and/or control. The construction permit for station W28AH had been granted to you in your individual capacity in March 1987. Yet, in August 1987, you entered into an agreement whereby you assigned the station permit to A.F.G. Broadcasting Corporation in exchange for 51% of the stock in the company. According to your responses to the Commission's inquiries and the articles of incorporation for A.F.G. Broadcasting, this company was created to manage the daily operations of station W28AH. You neither notified the Commission of this assignment nor obtained Commission consent to the assignment. Your failure to obtain such consent violated Section 310(d) of the Communications Act and Section 73.3540 of the Commission's Rules.

Furthermore, you appear to have engaged in a subsequent assignment of control of W28AH's construction permit/license to your son, Victor M. Ginorio, by means of an "irrevocable proxy" entered into on August 10, 1987. The stated reasons for this proxy were your concerns about your failing health, your inability to work, and your inability to remember things. Under the terms of this proxy, you authorized Victor Ginorio to vote your shares of stock in A.F.G. Broadcasting Corporation, to act on your behalf as president of the board of directors of A.F.G. Broadcasting, and to exercise control over the corporation's management, policies, administration, and development. That the proxy was termed "irrevocable", suggests an irreversible abdication of control to Victor Ginorio.

Your responses to the Commission's letters of inquiry and to questions posed in a January 30, 1992, deposition related to litigation instituted against you by Dana Murphy, appear to reinforce the conclusion that you have abdicated control of the construction permit/license from the very beginning. According to your deposition, your son Victor applied for the license in your name without your knowledge or your participation. You further state in the deposition that you were informed about receiving the station license only after your son Victor had obtained it, and that you had no idea why the construction permit/license was being obtained. Furthermore, in the deposition you state that Victor was the one who knew all the details about A.F.G. Broadcasting Corporation since you had delegated all your duties as president of the company to him. Thus, it appears that you had no knowledge of, experience in, or interest in broadcasting, and that you played no role in applying for the construction permit/license of W28AH.

The personnel policies of A.F.G Broadcasting Corporation also appear to indicate that you have abdicated control of W28AH to A.F.G. Broadcasting and Victor Ginorio. Your May 31, 1993, response to the Commission's inquiry states that Victor Ginorio is responsible for all personnel decisions, including the hiring and firing of employees, promotions and demotions, and signing payroll checks. There is no evidence in the record to suggest that you currently play, or have ever played, any role in the personnel policies of station W28AH. Rather, it appears that you have abdicated total control over this aspect of station operations to your son Victor.

With regard to the station's programming you stated in your initial response to the Commission's letter of inquiry that "a religious group produces and airs the programming." No further information about programming was provided. Only in a subsequent response to the Commission's letter of inquiry did you mention the name of this religious group as being L.A.D. Ministries, Inc. You also state that this programming is done pursuant to an oral agreement under which you charge L.A.D. Ministries, Inc. a monthly fee. Since this programming agreement is oral it is unclear who actually controls programming and how programming decisions are made. Although your response states that Victor Ginorio, in consultation with you, has been in charge of establishing programming policies, you have failed to provide any specifics or documentation concerning such consultations. Accordingly, it appears that you have abdicated control of the station's programming.

You also appear to have abdicated financial control of the station to A.F.G. Broadcasting Corporation and Victor Ginorio. Your May 31, 1993, response to the Commission's inquiry states that Victor Ginorio controls and has access to the station's bank accounts, prepares and maintains the station's financial records, and prepares and signs the station's checks. Copies of several checks included with your response, which list A.F.G. Broadcasting Corporation as

the account holder, bear Victor Ginorio's signature, but not yours. Because you did not submit a bank signature card as requested in the Commission's letter of inquiry, it is unclear whether you are even a signatory to the station's bank account. Furthermore, you state in your response to the letter of inquiry that since 1991, the station's accounts payable were listed in the name of L.A.D. Ministries, Inc., which currently programs the station. Accordingly, there is no evidence in the record to suggest that you currently play, or have ever played, any role in the financial operations of station W28AH.

In view of the above, pursuant to Section 503(b) of the Communications Act of 1934, as amended, you are hereby advised of your apparent liability for a forfeiture of $20,000 for your willful and repeated violation of Section 310(d) of the Communications Act and Section 73.3540 of the Commission's Rules. This amount was reached after consideration of the factors set forth in Section 503(b)(2) of the Communications Act and the guidelines described in our recently adopted *Standards for Assessing Forfeitures*, 8 FCC Rcd 6215 (1993). Under these standards, $20,000 is the base forfeiture for an unauthorized transfer of control of a station.

In regard to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be permitted." 47 C.F.R. Section 1.80(f)(3). Other relevant provisions of Section 1.80 of the Commission's Rules are summarized in the attachment to this letter.

Furthermore, you are hereby further ordered to provide to the Commission written documentation of your efforts to bring station W28AH into full compliance with Section 310(d) of the Communications Act and Section 73.3540 of the Commission's Rules. Such corrective action shall consist of documentation demonstrating your unequivocal reassertion of control over the station, or a copy of an application to assign the station license to Victor M. Ginorio, the current operator of the station. Failure to provide the written documentation in your response will constitute a violation of Section 73.1015 of the Commission's Rules and may result in the imposition of additional sanctions.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart, Chief
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Liability of Mississippi
Valley Broadcasting, Inc.,
Licensee of Radio Station
WLLR-FM, East Moline, Illinois

For a Forfeiture

MEMORANDUM OPINION AND ORDER

Adopted: January 31, 1994; Released: February 16, 1994

By the Chief, Mass Media Bureau:

1. The Commission, by the Chief of the Mass Media Bureau acting pursuant to authority delegated by Section 0.283 of the Commission's Rules, has under consideration a July 30, 1992, response to the Mass Media Bureau's Notice of Apparent Liability that was issued on July 1, 1992,[1] finding Mississippi Valley Broadcasting, Inc. (MVB), licensee of Station WLLR-FM, East Moline, Illinois, in apparent violation of Section 73.1216 of the Commission's Rules governing station conducted contests. The NAL for $12,500 was issued for MVB's apparent willful and continuing violations of the Commission's contest rule by failing to award the $1,000,000 prize to the contest winner. The facts are set forth in full detail in the NAL and will not be repeated here.

2. In addition to reiterating arguments already addressed in the NAL, MVB argues: (1) that the NAL is barred by the statute of limitations; (2) that MVB did not violate Section 73.1216 of the Commission's Rules; and (3) that even if the forfeiture is affirmed, the amount is excessive and should be reduced.

3. MVB argues that the NAL is barred by the statute of limitations set forth in 47 U.S.C. Section 503(b)(6) because of the timing of the issuance of the NAL and an intervening license renewal. MVB asserts that the contests in question were conducted in May 1989 and that any alleged violation falls outside the statute of limitations since the NAL was issued in July 1992. In such a case, the violation, if any, occurred more than three years before the NAL was issued, and more than one year before the date of the beginning of WLLR-FM's current license term, which began in December 1989. We reject this assertion. WLLR violated Section 73.1216 of the Rules in June 1991 when it failed to award the advertised prize. Accordingly, the violation occurred within the current license term and continues unabated. Therefore, MVB's argument concerning the statute of limitations is without merit.[2]

4. MVB also argues that it did not violate Section 73.1216 of the Commission's Rules, because it was actually Unidyne Communications, rather than MVB, that failed to award the prize to the complainant. MVB asserts that the Commission has failed to distinguish between the "Last Number Lotto Contest" conducted by MVB and the "Bonus Game" conducted by Unidyne. MVB argues that although one set of materials was used, these were actually *two* separate contests with *two* separate prizes. MVB argues that Rule #8 of the written contest rules clearly indicates that Unidyne Communications, not WLLR, is the sponsor of the "Bonus Game." We reiterate the findings set forth in the NAL and reject MVB's assertion that Unidyne was sponsoring and conducting the "Bonus Game" contest, while WLLR was merely a passive vessel broadcasting another entity's contest.[3]

5. MVB further denies that it was "negligent" in its choice of Unidyne to conduct and sponsor the Bonus Game contest. MVB cites its previous history of uneventful dealings with Unidyne in support of its stated belief that Unidyne was a reputable and financially sound company. Irrespective of its prior dealings with Unidyne, MVB had a responsibility to verify the solvency of Unidyne, especially when it was reasonably foreseeable that the winner of the contest would rely to her detriment on the award of the full prize.

6. Furthermore, MVB argues that it is unreasonable to hold it responsible as a guarantor of Unidyne's ability to pay all installments over a 20-year period. In essence, MVB argues that it is unfairly being held responsible for the refusal of a third party to pay the complainant. Although we do view MVB as the guarantor of the prize, we reject its assertion of unfairness. As already discussed, MVB created the clear impression in the public mind that it was the sponsor of the contest and cannot now evade liability by claiming otherwise. Furthermore, if MVB is a co-sponsor, it must pay the winner if the other co-sponsor is unable or unwilling to do so. *See George McKay III*, 6 FCC Rcd 7385 (MMB 1991). In addition, it would be unfair to overlook the winner's detrimental reliance on receiving the full amount of the prize money to which she was entitled.

7. Finally, MVB asserts that if the NAL is not rescinded, the amount of the forfeiture should be reduced. MVB argues that based on the ranking of contest violations in the hierarchy of violations described in the *Policy Statement on Standards for Assessing Forfeitures*, 8 FCC Rcd 6215 (1993), the Commission views contest violations "among the less serious offenses." Regardless of the location of a violation on the forfeiture chart, the seriousness of a violation within that particular category is the determinative factor. *See Policy Statement, supra*, footnote 5.

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[1] *See* 7 FCC Rcd 4474 (1992).

[2] The statute governing the issuance of NALs by the Commission was amended in 1992 to delete the 3-year limitation. The amended statute of limitations allows the Commission to fine a licensee for any violation that occurred within a current license term. 47 U.S.C. Section 503(b)(6). Even under the previous statute of limitations, however, the violation in question occurred within three years of the issuance of the NAL and would be subject to a forfeiture penalty.

[3] MVB also challenges the NAL's finding that MVB's publicity materials were deceptive and misleading in that they made the bonus game appear to be a licensee-conducted contest. We reject this argument, but note that our primary finding in this case was that MVB violated the contest rule by failing to conduct the contest as advertised and by not awarding the full prize.

Based on the context of MVB's conduct, and the resultant harm, we find its violation very serious indeed. MVB emphasizes its previous good conduct as a mitigating factor which should reduce the amount of the forfeiture. Upon viewing MVB's violation in the overall context of its prior good conduct, we agree with this assertion and will reduce the forfeiture.

8. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, IT IS ORDERED that Mississippi Valley Broadcasting, Inc. (MVB), the licensee of Radio Station WLLR-FM, East Moline, Illinois, FORFEIT to the United States the sum of Eight Thousand Seven Hundred Fifty Dollars ($8,750) for the willful violation of 47 C.F.R. Section 73.1216. Payment of the forfeiture may be made by mailing to the Commission, at the address indicated in the attachment to this Memorandum Opinion and Order, a check or similar instrument payable to the Federal Communications Commission. In regard to the forfeiture proceeding, the licensee may take any of the actions set forth in Section 1.80 of the Commission's Rules, as summarized in said attachment.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart, Chief
Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In re:

Complaint of Greater Dayton	CSR-4028-M
Public Television against	OH2024
Paxton Cable Television, Inc.	

Request for Carriage

MEMORANDUM OPINION AND ORDER

Adopted: December 23, 1993; Released: February 16, 1994

By the Chief, Mass Media Bureau:

1. On August 26, 1993, a petition on behalf of Greater Dayton Public Television, licensee of Television Broadcast Station WPTD (Educ., Ch. 16), Dayton, Ohio, was filed with the Commission claiming that Paxton Cable Television, Inc. ("Paxton"), operator of a cable television system serving Midway, Ohio, had declined to carry the station, even though WPTD is within fifty miles of the system's principal headend located in Midway at Latitude 39°36'33" and Longitude 84°04'31", and the station is therefore a "local" signal within the meaning of §5 of the Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (1992). WPTD requests that the Commission not only order Paxton to carry its signal on the cable system, but also order that the system carry it on channel 16, the channel on which it broadcasts over-the-air. No opposition to this petition has been filed.

2. WPTD's petition establishes that it is entitled to carriage on the Midway system and it has requested carriage on its over-the-air broadcast channel, as it is permitted to do under §5 of the 1992 Cable Act. Since no other pleadings have been filed in this matter, the complaint filed August 26, 1993, by Greater Dayton Public Television IS GRANTED, in accordance with §615(j)(3) (47 U.S.C. §535) of the Communications Act of 1934, as amended, and Paxton Cable Television, Inc. IS ORDERED to commence carriage of WPTD on cable channel 16 forty-five (45) days from the release date of this *Order*. This action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by §0.283 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

Gen. Docket No. 90-7

In the Matter of

Washington, D.C. Metropolitan Area
Public Safety Plan

ORDER

Adopted: February 10, 1994; Released: February 17, 1994

By the Deputy Chief, Land Mobile and Microwave Division and the Acting Chief, Spectrum Engineering Division:

1. The Private Radio Bureau and the Office of Engineering and Technology, acting under delegated authority, accepted the Washington, D.C. Metropolitan Area (Region 20) Public Safety Plan (Plan) on March 26, 1990, 55 FR 13319 (April 10, 1990).

2. By letter dated November 24, 1993, the Region proposed to amend its Plan. The proposed amendment would give the Regional Plan Review Committee authority to reallocate its 13 intraregional interoperability channels, except channel 792, to general pool assignment. The Commission placed the letter on Public Notice for comments due on January 18, 1994, 58 FR 65712 (December 16, 1993). The Commission received one comment from County of Prince William urging the Commission to grant the proposed amendment.

3. We have reviewed the proposed amendment to the Region 20 Plan and, having received no comments to the contrary, conclude it furthers the interests of the eligible entities within the Region.

4. Accordingly, IT IS ORDERED, That the Public Safety Radio Plan for the Washington, D.C. Meropolitan Area (Region 20) IS AMENDED, as set forth in the Region's letter of November 24, 1993. This Amendment is effective immediately.

FEDERAL COMMUNICATIONS COMMISSION

Edward R. Jacobs
Deputy Chief, Land Mobile and
Microwave Division

Lawrence P. Petak
Acting Chief, Spectrum Engineering
Division

Before the
Federal Communications Commission
Washington, D.C. 20554

PR Docket No. 93-80

In the Matter of

Hawaii Public Safety Plan

ORDER

Adopted: February 7, 1994; Released: February 17, 1994

By the Deputy Chief, Land Mobile and Microwave Division and the Acting Chief, Spectrum Engineering Division:

1. The Private Radio Bureau and the Office of Engineering and Technology, acting under delegated authority, accepted the Hawaii (Region 11) Public Safety Plan (Plan) on June 2, 1993, 58 FR 34049 (June 23, 1993).

2. By letter dated November 18, 1993, the Region proposed to amend its Plan. The proposed amendment would revise the current channel allotments. The Commission placed the letter on Public Notice for comments due on January 18, 1994, 58 FR 65712 (December 16, 1993), and received no comments.

3. We have reviewed the proposed amendment to the Region 11 Plan and, having received no comments to the contrary, conclude it furthers the interests of the eligible entities within the Region.

4. Accordingly, IT IS ORDERED, That the Public Safety Radio Plan for Hawaii (Region 11) IS AMENDED, as set forth in the Region's letter of November 18, 1993. This Amendment is effective immediately.

FEDERAL COMMUNICATIONS COMMISSION

Edward R. Jacobs
Deputy Chief, Land Mobile and
Microwave Division

Lawrence P. Petak
Acting Chief, Spectrum Engineering
Division

Before the
Federal Communications Commission
Washington, D.C. 20554

LETTER
February 9, 1994

Released: February 17, 1994

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

CBS, Inc. 8210-AGS
Licensee of Radio Station WBBM(FM) 92020305
51 West 52nd St.
New York, NY 10019

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR A FORFEITURE pursuant to Section 503(b) of the Communications Act of 1934, as amended. The action is taken under authority delegated to the Chief, Mass Media Bureau, pursuant to Section 0.283(c)(3) of the Commission's Rules.

In February 1992 the Commission received a letter from Ms. Genie S. Uli alleging that Station WBBM(FM) conducted a contest in which the prize was a cellular phone with service for one year. She stated that her daughter won the prize, which she was to collect from CarTel, a local cellular phone distributor. Ms. Uli further stated that when her daughter tried to collect the prize, CarTel refused to award it unless she activated it through CarTel. She also noted that her subsequent requests to WBBM(FM) for help in obtaining the prize had been to no avail.

Based on this complaint, the Commission sent you a letter of May 28, 1992, inquiring into this alleged violation of Section 73.1216 of the Commission's Rules. ("licensee conducted contests"). In your June 29, 1992, response you relate that WBBM(FM) has settled with Ms. Uli by paying her the sum of $500 in lieu of the advertised prize. As you state, it appears that WBBM(FM)'s disclosure announcement did indicate that the winner's service had to be established through CarTel: "winners must establish billing credit through CarTel." Nevertheless, you admit that WBBM(FM) failed to "reasonably disclose" conditions of the contest, "primarily because the disclosure announcement concerning those conditions was broadcast by the station only in overnight time periods." Specifically you point out that the contest hours were between 6:00 PM and midnight, while the disclosure announcement ran only between midnight and 5:00 AM. Additionally, you relate your conclusion that a $300 termination fee that was to be assessed against a winner in the event of premature discontinuance of service by the winner, "should also have been disclosed."

Furthermore, you state in your response letter that given WBBM(FM)'s failure to make reasonable disclosure of the nature of the prize, CBS Radio has emphasized to WBBM(FM) the "necessity for strict compliance with FCC rules and CBS Radio policy in the conduct of station-sponsored contests." More specifically you state that CBS Radio has reminded WBBM(FM), among other things, that "(1) FCC rules require that all material terms of a station-sponsored contest be fully disclosed; (2) CBS radio policy requires that such a disclosure announcement be scheduled at least once a day during a contest, and rotated throughout all dayparts in which the contest is promoted."

Section 73.1216 of the Commission's Rules states: "A licensee that broadcasts or advertises information about a contest it conducts shall fully and accurately disclose the material terms of the contest, and shall conduct the contest substantially as announced or advertised. No contest description shall be false, misleading or deceptive with respect to any material term." Section 73.1216, Note 2 states in part: "In general, the time and manner of disclosure of the material terms of a contest are within the licensee's discretion. However ... [t]he material terms should be disclosed periodically by announcements broadcast on the station conducting the contest, but need not be enumerated each time an announcement promoting the contest is broadcast. Disclosure of material terms in a reasonable *number of announcements is sufficient.*"

It appears, as you recognize in your response, that WBBM(FM) failed to disclose the terms of the contest as required by Section 73.1216. Failure to disclose material terms in a reasonable number of announcements during the hours in which the contest is conducted is unreasonable. Likewise, the $300 fee in the event of discontinuance by a winner constitutes a material term that should have been disclosed.

In light of the foregoing, it appears that CBS, Inc., licensee of Station WBBM(FM), willfully violated Section 73.1216 of the Commission's Rules. Accordingly, pursuant to Section 503(b) of the Communications Act of 1934, as amended, CBS, Inc., licensee of station WBBM(FM), Chicago, Illinois, is hereby advised of its apparent liability for a forfeiture of five thousand dollars ($5,000) for its apparent willful violation of Section 73.1216 of the Commission's Rules. The amount specified was determined by using the criteria set forth in the *Policy Statement, Standards for Assessing Forfeitures*, 8 FCC Rcd 6215 (1993).

In regard to this forfeiture proceeding, you are afforded a period of thirty (30) days from the date of this letter "to show, in writing, why a forfeiture penalty should not be imposed or should be reduced, or to pay the forfeiture. Any showing as to why the forfeiture should not be imposed or should be reduced shall include a detailed factual statement and such documentation and affidavits as may be pertinent." 47 U.S.C. Section 1.80(f)(3). Other relevant provisions of Section 1.80 are summarized in the attachment to this letter.

FEDERAL COMMUNICATIONS COMMISSION

Roy J. Stewart
Chief, Mass Media Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

American Telephone and Telegraph Company

Application for Authorization to Convey Capacity in the TAT-9 Cable System, and Authorization Under Section 214 of the Communications Act of 1934, as Amended, to Acquire and Operate Capacity in a Digital Submarine Cable System Between the Canary Islands (Spain) and Chipiona, Spain (PENCAN 5) and in a Digital Submarine Cable System Between the Canary Islands, Madeira Island (Spain), and South Africa (SAT-2)

File No. I-T-C-94-048

ORDER AND AUTHORIZATION

Adopted: January 27, 1994; Released: February 17, 1994

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested application, filed by American Telephone and Telegraph Company (AT&T)[1] pursuant to Section 214 of the Communications Act of 1934, as amended, we find that the present and future public convenience and necessity require the grant of this application.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-94-048 IS GRANTED and AT&T is authorized to:

a. convey, on an Indefeasible Right of User (IRU) basis, half-interests in thirty (30) Minimum Assignable Units of Ownership (MAUOs)[2] of capacity in the TAT-9 Cable System[3] to Telkom SA, its foreign correspondent in South Africa;

b. acquire, on and IRU basis, and operate half-interests in thirty (30) jointly-assigned MAUOs of capacity in the PENCAN 5 Submarine Cable System, between Sardina (Canary Islands, Spain), El Medano (Canary Islands, Spain) and Chipiona (Cadiz, Spain);[4]

c. acquire, on an IRU basis, and operate half-interests in 120 MAUOs of capacity in the SAT-2 Cable System between the Canary Islands, Spain and Madeira Island, Portugal, and South Africa;[5]

d. acquire by lease or other comparable means appropriate extension facilities; and

e. activate capacity in the TAT-9, PENCAN 5 and SAT-2 Cable Systems and in the aforementioned extension facilities for the provision of its authorized telecommunications services between the United States and South Africa and other certificated points.

3. This order is issued pursuant to Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*See* Section 1.4(b)(2).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

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[1] AT&T's wholly-owned subsidiary, Transpacific Communications, Inc., will own portions of the PENCAN 5 and SAT-2 Cable Systems on behalf of AT&T.

[2] A MAUO is a 64-kbps circuit equivalent.

[3] *TAT-9 Authorization*, 4 FCC Rcd 1129 (1988).

[4] The PENCAN 5 Cable System, owned by Telefonica de Espana S.A., extends between landing points at Sardina (Canary Islands), Spain; El Medano (Canary Islands), Spain; and Chipiona, Spain. The PENCAN-5 Cable System is divided into 5 segments: Segment A consists of the cable station at Chipiona; Segment B consists of the submarine cable between Chipiona and Sardina; Segment C consists of the cable station at Sardina; Segment D consists of the submarine cable between Sardina and El Medano; and Segment E consists of the cable station at El Medano. The estimated cost for the 30 half-interests in PENCAN-5 is $68,589, plus the capital, operating and maintenance costs of its interests on a pro rata basis. The total capacity of this cable is 1024 2Mbit/s circuits in Segment B and 768 2Mbit/s circuits in Segment D.

[5] The SAT-2 Cable System, co-owned by thirteen (13) parties, extends between landing points on the west coast of South Africa (Segment A); the Canary Islands, Spain (Segment B); and Madeira Island, Portugal (Segment C). The SAT-2 cable system is divided into 4 segments, consisting of the 3 above-referenced landing stations and a submarine cable (Segment D) linking Segments A, B, and C. Segment D consists of three subsegments, D-1, D-2, and D-3. Subsegment D-1 is that part of SAT-2 between the System Interface at Segment A and the Branching Unit, including the Branching Unit. Subsegment D-2 is that part of Sat-2 between the System Interface at Segment B and the Branching Unit. Subsegment D-3 is that part of SAT-2 between the System Interface at Segment C and the Branching Unit. The proposed acquisition of half-interests in 120 in SAT-2 consists of half-interests in 120 MAUOs in Subsegment D-1, in 90 MAUOs in Subsegment D-2, and in 30 MAUOs in Subsegment D-3. The estimated cost of such capacity is $4.2 million, plus the capital, operating, and maintenance costs of its interests on a pro rata basis. The SAT-2 Cable System has a capacity of 560 Mbit/s.

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter

COMSAT CORPORATION File No. I-T-C-94-077

For authority under Section 504(c) of the International Maritime Satellite Telecommunications Act of 1978 and Section 214 of the Communications Act of 1934, as amended, to interconnect facilities with Sprint for the provision of authorized Inmarsat mobile services

ORDER, AUTHORIZATION AND CERTIFICATE

Adopted: January 31, 1994; Released: February 17, 1994

By the Chief, International Facilities Division:

1. Upon consideration of the above-captioned uncontested application, filed pursuant to Sections 503(c), 503(g), and 504(c) of the International Maritime Satellite Telecommunications Act of 1978 and Section 214 of the Communications Act of 1934, as amended, IT IS HEREBY CERTIFIED that the present and future public convenience and necessity will require interconnection of Comsat Corporation's (Comsat's) authorized mobile satellite communications services provided via the Inmarsat system with the public-switched telephone network facilities furnished by Sprint.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-94-077 IS GRANTED and Comsat is authorized to:

(a) interconnect its facilities with Comsat's Mobile Satellite Switching Centers designated in Comsat's tariffs for the provision of telecommunications between various Inmarsat regions served by Comsat and points served by Sprint: and

(b) provide its currently authorized Inmarsat mobile satellite services through the aforementioned interconnected facilities of Sprint pursuant to the agreement dated and submitted to the Commission on December 15, 1993 between Comsat and Sprint.

3. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

COMSAT CORPORATION File No. CSS-90-005-LA

Application for authority to participate
in the launch of the INTELSAT VII (F-2)

ORDER AND AUTHORIZATION

Adopted: February 3, 1994; Released: February 17, 1994

By the Chief, International Facilities Division:

1. The Commission has under consideration application, File Number CSS-90-005-LA, filed by the Communications Satellite Corporation (Comsat) (now COMSAT Corporation) on May 18, 1990, and supplemented on September 6, 1990 and January 14, 1994, for authority to participate in the launch, positioning and in-orbit testing of the INTELSAT VII (F-2) satellite, hereafter referred to as the 702 satellite.

2. The application appeared on the Commission's Public Notice on June 20, 1990. Comments were received by Pan American Satellite (PAS) on July 20, 1990. PAS states in its comments that it does not object to Comsat's current requests for launch authority, but asks that any action that the Commission takes be without prejudice to two pending matters that relate to the INTELSAT VII procurement. The first is PAS's appeal of the Commission's February 1990 Intelsat VII procurement decision.[1] The second is PAS's complaint filed in January 1989 in which it contends that Comsat's participation in the INTELSAT VII procurement prior to receiving FCC approval consititued a violation of statutes and FCC policies.[2] PAS therefore asks that the Commission take no action with respect to the instant applications that would prejudice or adversely affect the outcome of PAS's pending appeal and complaint.

3. In the application, Comsat states that the 702 satellite is currently under construction at Ford Aerospace Company (FAC) and is expected to be delivered approximately April 1, 1992. Current INTELSAT deployment plans approved by the INTELSAT Board of Governors at the BG-99 December 1993 meeting call for the launch to take place on February 28, 1994, utilizing an Ariane 44LP launch vehicle. This satellite will replace the INTELSAT V-A operating in inclined orbit at 359^0 East Longitude in the Atlantic Ocean Region (AOR).

4. The estimated costs associated with the 702 satellite are as follows (all amounts in real year dollars):

FAC Contract (including delivery price, engineering changes and amendments)	$ 78.1 million
FAC Launch Support (to be determined)	
Performance incentives, capitalized	$ 2.6 million
Performance incentives, expensed	$ 23.7 million
Support Contract	$ 3.2 million
Launch Services	$ 98.3 million
TOTAL INTELSAT	$205.9 million
TOTAL COMSAT (based on current ownership share of 23.9%)	$ 49.2 million

5. In view of the foregoing and the need to provide the necessary satellite facilities to meet traffic requirements, we conclude that the public interest would be served by a grant of the subject request. Accordingly, Comsat is AUTHORIZED to participate in the launch and test program of the 702 satellite to be positioned at 359$ East Longitude, subject to the following terms and conditions:

(a) This authorization is limited to the described program. Any change in the authorized location due to a launch delay or other circumstances will be considered upon a proper request by Comsat for authority;

(b) Comsat shall furnish via the 702 satellite only those channels of communication for commercial service which have been, or may be, authorized by the Commission under Section 214 of the Communications Act of 1934, as amended;

(c) Within 30 days after completion of the testing program, Comsat shall provide the Commission with a summary report of its results and upon request, shall make the detailed test data available;

(d) Conduct of the program authorized here shall be without h) interruption of commercial satellite service now authorized at U.S. earth stations;

(e) Neither this authorization nor any right granted herein shall be assigned or otherwise transferred without approval of the Commission; and

(f) Unless extended or modified for good cause, this authorization shall terminate six months after the release date of this order.

(g) This action is without prejudice to any action which may be taken in the appeal of the Commission's decision as referenced in footnote 1 above.

6. This order is issued under Section 0.291 of the Commission's Rules and is effective upon adoption. Petitions for reconsideration under Section 1.106 or applications for

[1] *See* Pan American Satellite v. FCC, No. 90-1134 (D.C. Cir., Filed March 12, 1990)
[2] *See* File No. E-89-87. This issue has been been resolved. *See* 8 FCC Rd 5622, Common Carrier Bureau (1993).

review under Section 1.115 of the Commission's Rules may be filed within 30 days of the date of public notice of this order (*See* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities
Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Interlink Telecom Co. File No. I-T-C-94-004

Application for Authority
pursuant to Section 214 of the
Communications Act, as amended, to
operate as an international resale
carrier

ORDER AND AUTHORIZATION

Adopted: February 4, 1994; Released: February 17, 1994

By the Chief, International Facilities Division:

1. Interlink Telecom Co. (Interlink) filed the above-captioned application pursuant to Section 214 of the Communications Act of 1934, as amended, to engage in the international resale of public switched services between the United States and various international points. On November 15, 1993, American Telephone and Telegraph Company (AT&T) filed a petition to deny Interlink's application to the extent Interlink intends to engage in "code calling"[1] as part of its provision of international services. Interlink filed an opposition, in which it argues that it is does not propose to engage in "code-calling." We find that the present and future public convenience and necessity will be served by the partial grant of the application.

2. Accordingly, IT IS ORDERED that application File No. I-T-C-94-004 IS GRANTED, in part, and Interlink Telecom Co. (Interlink) is authorized to resell international switched services as set forth in MCI Telecommunications Corp. Tariff FCC No. 1, AT&T Tariff FCC No. 1, Sprint Communications Corp. Tariff FCC No. 1, Allnet Communications Tariff FCC No. 1, and Cable & Wireless Communications, Inc. Tariff FCC No. 3, between the United States and international points listed in those tariffs; provided that Interlink shall not engage in "code-calling" absent a Commission determination that the resale of switched voice service using "code-calling" is in the public interest.

3. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. § 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this order.

4. IT IS FURTHER ORDERED that:

(a) the applicant shall file publicly any contracts entered into with other carriers or a contract summary in accordance with Section 203 of the Communications Act, 47 U.S.C. § 203, and the *Interexchange Order*;[2] and

(b) the services obtained by the applicant shall be made generally available to similarly situated customers at the same terms, conditions and rates.

5. IT IS FURTHER ORDERED that neither the applicant nor any persons or companies directly or indirectly controlling or controlled by the applicant, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions, which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which the applicant or any persons or companies controlling or controlled by the applicant are parties.

6. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. § 43.61.

7. IT IS FURTHER ORDERED that the applicant shall file with the Commission a copy of any operating agreements it enters into with its foreign correspondents within 30 days of its execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. § 43.51.

8. IT IS FURTHER ORDERED that nothing in this authorization should be construed to include authorization for the transmission of money in connection with the services the applicant seeks authority to provide. The transmission of money is not considered to be a common carrier service. Therefore, nothing in this Order should be construed as containing authority for the transmission of money.

9. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

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[1] AT&T describes "code-calling" as an activity in which:

> ... the reseller assigns its foreign customer a specific telephone number in the United States and instructs the customer to call that number and hang up after a specified number of rings whenever the customer wants to place a call. The reseller's switch then places an outbound call to the foreign customer and provides the customer U.S. dial tone to complete calls to the United States or the world.

AT&T Petition to Deny, at 2. According to AT&T, "code-calling" violates the Communications Act of 1934, as amended. AT&T explains that "[b]ecause the initial inbound call is not completed, the foreign carrier handling the initial call receives no compensation for the call and the U.S. carrier carrying the U.S. portion of the inbound call receives no compensation through the international settlements process." *Id.*

[2] *See Competition in the Interstate Interexchange Marketplace*, 6 FCC Rcd 5880, 5902 (1991) (*Interexchange Order*).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Corporate Satellite Communications, Inc. — File No. I-T-C-93-314

Application For Authority Pursuant to Section 214 of the Communications Act, As Amended, to Establish and Operate Channels of Communication between the United States and Various locations.

ORDER AND AUTHORIZATION

Adopted: February 4, 1994; Released: February 17, 1994

By the Chief, International Facilities Division:

1. We have before us the above-captioned application, filed pursuant to Section 214 of the Communications Act of 1934, as amended, by Corporate Satellite Communications, Inc. (CSC). As explained below, we find that the present and future public convenience and necessity will be served by authorization of the requested facilities and services.

2. In its application, CSC initially requested authority to establish channels of communication using the INTELSAT, PanAmSat, TDRS, Intersputnik and WSDRN satellite systems. On October 8, 1993, Columbia Communications, Inc. (Columbia) filed Comments on CSC's application, objecting to the application to the extent CSC requested authority to establish channels via the Intersputnik and WSDRN satellite systems. According to Columbia, grant of CSC's request to use capacity on the Russian Federation's Intersputnik and WSDRN satellite systems would "permit the Russian Federation to expand its access to U.S. international telecommunications markets at the same time that Russia is declining to open its own markets to independent U.S. satellite systems that wish to provide similar services."[1] On October 21, 1993, CSC filed an Opposition to Columbia's Comments and, on October 29, 1993, filed a Request for Bifurcation and Partial Grant of the application.[2] Given Columbia's petition and CSC's subsequent request for bifurcation, we herein grant CSC's application, in part, and authorize CSC to establish channels of communication with the PanAmSat and TDRS satellite systems only.[3]

3. Accordingly, IT IS ORDERED that application File No. I-T-C-93-314 IS GRANTED, in part, and Corporate Satellite Communications, Inc. (CSC) is authorized to:

a. establish up to one 128-Kbps circuit between its appropriately-licensed international fixed satellite earth stations (Call Sign KA-333 and KA-321)[4] in the United States and the PAS-1 satellite for the provision of voice and data service not interconnected with the public switched network, between the United States and those points listed in Appendix 1 for the PAS-1 satellite;

b. establish up to one 128-Kbps circuit between its appropriately-licensed international fixed satellite earth stations (Call Sign KA-333 and KA-321) in the United States and the PAS-1 satellite for the provision of voice and data service interconnected with the public switched network, between the United States and the Russian Federation;[5]

c. establish channels of communication between its appropriately-licensed international fixed satellite earth stations (Call Sign KA-333 and KA-321) in the United States and the PAS-1 satellite for the provision of video transmissions, not interconnected with the public switched network, occupying up to one 36-Mhz tranponder on the PAS-1 satellite between the United States and the points listed in Appendix 1 for the PAS-1 satellite;

d. establish up to one 128-Kbps circuit between its appropriately-licensed international fixed satellite earth stations (Call Sign KA-333 and KA-321) in the United States and the TDRS-41 satellite for the provision of voice and data service not interconnected with the public switched network, between the United States and those points listed in Appendix 1 for the TDRS-41 satellite;

e. establish up to one 64-Kbps circuit between its appropriately-licensed international fixed satellite earth stations (Call Sign KA-333 and KA-321) in the United States and the TDRS-41 satellite for the provision of voice and data service interconnected with the public switched network, between the United States and Germany and between the United States and the United Kingdom;[6] and

f. establish channels of communication between its appropriately-licensed international fixed satellite earth stations (Call Sign KA-333 and KA-321) in the United States and the TDRS-41 satellite for the provision of video transmissions, not interconnected with the public switched network, occupying up to one 36-Mhz tranponder on the TDRS-41 satellite between the United States and the points listed in Appendix 2 for the TDRS-41 satellite.

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[1] Columbia's Comments, at 3.

[2] On November 2, 1993, Columbia filed a Reply to CSC's Opposition. CSC submitted further revisions of its application on December 1, 1993, December 23, 1993, and January 4, 1994.

[3] This authorization is without prejudice to further Commission action on the remainder of CSC's application regarding the use of satellite systems other than PanAmSat and TDRS.

[4] The Bureau has modified CSC's earth stations licenses to permit use of the earth stations consistent with the provision of services authorized in paragraph 3.

[5] Provision of public switched service over the PAS-1 satellite is conditioned on modification of PanAmSat's license to permit such use.

[6] Provision of public switched service over the TDRS-41 satellite is conditioned on modification of Columbia's license to permit such use.

4. IT IS FURTHER ORDERED that the applicant shall file with the Commission a copy of any operating agreements it enters into with its foreign correspondents within 30 days of its execution, and shall otherwise comply with the filing requirements contained in Section 43.51 of the Commission's Rules, 47 C.F.R. § 43.51.

5. IT IS FURTHER ORDERED that the applicant shall file a tariff pursuant to Section 203 of the Communications Act, 47 U.S.C. § 203, and Part 61 of the Commission's Rules, 47 C.F.R. Part 61, for the services authorized in this order.

6. IT IS FURTHER ORDERED that our authorization of the applicant to provide private lines is limited to the provision of such private lines only between the United States and those points listed in Appendix 1 -- that is, private lines which originate in the United States and terminate in one of the points listed in Appendix 1, or which originate in one of the points listed in Appendix 1 and terminate in the United States. In addition, the applicant may not -- and the applicant's tariff must state that the applicant's customers may not -- connect private lines provided over these facilities to the public switched network at either the U.S. or foreign end, or both, for the provision of international basic communications services, including switched voice services, unless authorized to do so by the Commission upon a finding that the foreign administration affords resale opportunities equivalent to those available under U.S. law, in accordance with *Regulation of International Accounting Rates*, Phase II, First Report and Order, 7 FCC Rcd 559 (1991), *Order on Reconsideration and Third Further Notice of Proposed Rulemaking*, 7 FCC Rcd 7927 (1992), *petition for reconsideration pending*.

7. IT IS FURTHER ORDERED that our authorization of the applicant to establish channels of communication for the provision of switched voice service is limited to the provision of such service by entities authorized by the Commission to provide such service over CSC's earth stations.

8. IT IS FURTHER ORDERED that neither the applicant nor any persons or companies directly or indirectly controlling or controlled by the applicant, or under direct or indirect common control with it, shall acquire or enjoy any right, for the purposes of handling or interchanging traffic to or from the United States, its territories or possessions, which is denied to any other United States carrier by reason of any concession, contract, understanding, or working arrangement to which the applicant or any persons or companies controlling or controlled by the applicant are parties.

9. IT IS FURTHER ORDERED that the applicant shall file the annual reports of overseas telecommunications traffic required by Section 43.61 of the Commission's Rules, 47 C.F.R. § 43.61.

10. IT IS FURTHER ORDERED that the Commission retains jurisdiction over the allocation of circuits to common carriers over the PAS-1 and TDRS-41 satellites.

11. IT IS FURTHER ORDERED that the applicant shall file an application pursuant to Section 214 of the Communications Act, 47 U.S.C. § 214, before adding any circuits or channels of communication for the provision of service over any separate satellite system.

12. IT IS FURTHER ORDERED that nothing in this authorization should be construed to include authorization for the transmission of money in connection with the services the applicants seek authority to provide. The transmission of money is not considered to be a common carrier service. Therefore, nothing in this Order should be construed as containing authority for the transmission of money.

13. This order is issued under Section 0.291 of the Commission's Rules and is effective upon release. Petitions for reconsideration under Section 1.106 or applications for review under Section 1.115 of the Commission's Rules may be filed within 30 days of public notice of this order (*see* Section 1.4(b)(2)).

FEDERAL COMMUNICATIONS COMMISSION

George S. Li
Chief, International Facilities Division
Common Carrier Bureau

APPENDIX 1

PAS-1 (Service not interconnected with the public switched network)

Anguilla
Argentina
Aruba
Austria
Azerbaijan
Bahamas
Belgium
Bermuda
Bolivia
Brazil
British Virgin Islands
Cayman Islands
Chile
Columbia
Costa Rica
Czech Republic
Denmark
Dominican Republic
Ecuador
France
Germany
Greece
Guatemala
Haiti
Honduras
Ireland
Italy
Jamaica
Luxembourg
Mexico
Monaco
Montserrat
Netherlands
Netherlands Antilles
Panama
Paraguay
Peru
Portugal
Romania
Russian Federation
Spain
Switzerland
Trinidad and Tobago
Turks and Caicos Islands
United Kingdom
Venezuela
Yugoslavia

TDRS-41 (Service not interconnected with the public switched network)

Austria
Bahamas
Belgium
Canada
Denmark
Finland
France
Germany
Ireland
Israel
Jamaica
Liechtenstein
Luxembourg
Mexico
Netherlands
Portugal
Sweden
Switzerland
Turkey
United Kingdom

Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 93-129

In the Matter of

800 Base Access Tariffs and the
800 Service Management System Tariff

ORDER

Adopted: January 31, 1994; Released: January 31, 1994

By the Acting Chief, Common Carrier Bureau

I. INTRODUCTION

1. On July 19, 1993 the Bureau released an order,[1] designating issues in our investigation of the 800 data base access tariffs. That order required each local exchange carrier (LEC) to disclose its computerized cost model on the record if the justification for its rates is based on the use of the model. Alternatively, if a LEC preferred not to disclose its computer model, the order allowed the LEC to develop its costs by other methods, provided that those methods are disclosed to the public on the record.[2]

2. Three petitions were filed seeking waiver of those requirements[3] and the Bureau requested comments on the petitions.[4] Seven parties filed comments on the petitions.[5]

II. BACKGROUND

3. The Commission stated that the 800 database services provided by the LECs would be divided into two major categories, the basic query service[6] and vertical features.[7] Basic query service was classified as a "restructured" service by the Commission. Under price cap regulation, a carrier's revenue from a restructured service generally cannot exceed the revenue that it received from the old service. Because of this limitation, a carrier does not need to provide detailed cost support for the rates for a restructured service. However, in the present proceeding, the Commission also allowed the LECs exogenous treatment for the costs they specifically incurred to implement and operate the basic 800 database service.[8] Exogenous treatment allows the LEC to make a one-time adjustment to its price cap indices when extraordinary costs are incurred in certain instances. Therefore, for the basic 800 database services, the LECs only need to provide cost support for their exogenous cost claims. The second major category of 800 database services is vertical features. Vertical features are optional. In addition, interexchange carriers (IXCs) are capable of performing some vertical features within their own networks. The Commission classified the LECs' vertical features as new services. Under the price cap rules, the LECs are required to provide cost support for new services.[9]

4. Bell Communications Research (Bellcore) has developed several cost models that the LECs use to determine the investment required to produce one unit of output.[10] US West developed its own model, the Switching Cost Model (SCM), and GTE developed its own model. The models allocate investment when a switch, for example, provides different kinds of services. In the Open Network Architecture (ONA) proceeding, many of the LECs used a computerized cost model called the Switching Cost Information System (SCIS) to analyze a switch to determine the investment needed to provide each of the many ONA services that the switch is capable of providing. The SCIS model analyzes the switches in the LEC networks. In the ONA proceeding, the Commission stated that unbundled

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[1] *800 Data Base Access Tariffs and the 800 Service Management System Tariff, Order Designating Issues for Investigation*, CC Docket 93-129, 8 FCC Rcd 5132 (1993) (*Designation Order*).

[2] *Id.* at 5135-36

[3] Bell Atlantic, Pacific Bell, Nevada Bell, Southwestern Bell, BellSouth, NYNEX and Ameritech filed a joint Petition for Waiver on September 16, 1993 (Joint Petition). US West, which uses a model other than CCSCIS, filed a Contingent Petition for Waiver on September 17, 1993, asking that the Commission waive the disclosure requirements if we interpreted the order to require disclosure of its model. GTE Service Corporation filed a Petition for Waiver on September 20, 1993.

[4] *See also, Public Notice, Participating Bell Operating Companies, US West and GTE Request Waivers of Requirement to Disclose Cost Support*, 8 FCC Rcd 7328 (1993) (established pleading cycle for comments on LEC petitions for waiver of cost disclosure requirements in this proceeding).

[5] Comments on the petitions were filed by Ad Hoc Telecommunications Users Committee, Allnet Communications, Cincinnati Bell, MCI Telecommunications Corporation, National Data Corporation, Northern Telecom and the Sprint Communications Company.

[6] "Basic query service" includes the information necessary to route the call to the interexchange carrier (IXC) that handles it. It also includes area of service routing at the LATA level, a service capable of geographically dividing traffic between two or more interexchange carriers.

[7] "Vertical features" are the services beyond merely routing the call to the correct IXC. They include dividing traffic to a single 800 number among two or more IXCs based on such factors as the time of day or based on a percentage allocation of traffic.

[8] *Provision of Access for 800 Service, Second Report and Order*, 8 FCC Rcd 907, 911 (1993).

[9] A LEC introducing new services is required to submit its engineering studies, time and wage studies, or other cost accounting studies to identify the direct costs of providing the new service. Once the direct costs have been identified, LECs add overhead costs to derive the overall price of the new service. The cost support also includes the following information: (1) a study containing a projection of costs for a representative 12 month period; (2) estimates of the effect of the new service on traffic and revenues, including the traffic and revenues of other services and (3) supporting workpapers for estimates of costs, traffic and revenues. *See Amendments of Part 69 of the Commission's Rules Relating to the Creation of Access Charge Subelements for Open Network Architecture, Report and Order & Order on Further Reconsideration and Supplemental Notice of Proposed Rulemaking*, 6 FCC Rcd 4524, 4531 (1991).

[10] In the present case, the output could be one basic 800 data base query or one POTS translation.

services within the switched access element would be divided into Basic Service Arrangements (BSAs) and Basic Service Elements (BSEs). Unbundling under ONA was regarded by the Commission as a restructure and the LECs were required to provide new services cost support for the BSEs. A model was necessary in the ONA proceeding because various ONA services use different combinations and amounts of switch resources. In that proceeding, the Bureau required the LECs to disclose edited versions of SCIS software and documentation to interested parties and required that actual price lists and other vendor information be disclosed to intervenors. Further, the Bureau required the LECs to subject the SCIS model to an independent audit by an accounting firm. However, the Bureau permitted the LECs to limit the interested parties' access to the disclosed information by, for example, only allowing one attorney and two cost accounting experts for each intervenor to examine the information and by requiring that inspections of the model be on LEC or Bellcore premises. The Commission affirmed those disclosure procedures but, in doing so, stated that "it did not expect the unusual procedures adopted for review of the ONA tariffs to be employed in the future without substantial justification.[11] In the present proceeding, the LECs used the Common Channel Signalling Cost Information System (CCSCIS) to develop the investment for their vertical features. In addition, some LECs calculated some of their exogenous costs by using CCSCIS.[12] This model is designed to analyze the equipment in the Signalling System 7 network to determine the investment required to produce one unit of a particular service.

III. JOINT PETITION

5. *Petition:* The participating Bell Operating Companies (BOCs) filed a joint Petition for Waiver which requested that they be excused from what they interpret as the Designation Order's requirement that they disclose, on the record, the CCSCIS cost model. All of these companies license the CCSCIS model from Bellcore and used it to develop at least some of their cost support for the 800 data base tariffs. The Joint Petition contends that the CCSCIS model is a trade secret and confidential commercial information.[13] The Joint Petition also argues that engineering and cost information provided by the switch vendors is proprietary to those vendors. They argue that the "switch vendors have indicated to Bellcore that they might deny Bellcore their proprietary engineering and cost data for the CCSCIS model if disclosure were a possibility."[14] The Joint Petition states that disclosure is properly denied because Bellcore is likely to suffer competitive harm in the market for competitive cost modeling services.[15] Bellcore has spent $2.4 million and five years in developing the CCSCIS model and expects to receive up to $3.5 million in licensing revenue over a five year period.[16] The Joint Petition argues that the disclosure requirements should be similar to those employed in the ONA proceeding[17] and suggests an alternative method of disclosure which contains four elements: (1) complete disclosure of all CCSCIS software and documentation to Commission staff; (2) Bellcore assistance to Commission staff in their evaluation of the model, including sensitivity analysis, workshops and training sessions; (3) certification by equipment vendors that their data, which is used by the CCSCIS model to calculate costs, has been properly reflected in the cost model, and (4) release, to interested parties that execute an appropriate non-disclosure agreement, of edited documentation and the training of interested parties through workshops. Under this proposal the interested parties would not receive information such as vendor equipment prices, resource consumption figures, equipment capacities or algorithms or other information "considered proprietary by Bellcore..."[18] The interested parties would not receive even an edited version of the software for the CCSCIS model. The affidavits attached to the Joint Petition also argue that, contrary to the statements in the *Designation Order*,[19] the LECs need a cost model to develop costs for 800 data base service, although the affidavits only expressly claim that the model is essential to calculate vertical services investment.[20]

6. *Comments and Replies:* With the exception of one LEC and one equipment vendor,[21] the commenters generally

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[11] *Commission Requirements for Cost Support Material to be Filed with Open Network Architecture Access Tariffs*, FCC 93-531 at n.17 (December 15, 1993) (*Review of SCIS Disclosure Order*). *See also Open Network Architecture Tariffs of Bell Operating Companies, Order*, CC Docket 92-91, FCC 93-532 at n.163, (December 15, 1993) (*Final ONA Order*) (in an order released on the same day, restates that disclosure procedures in the ONA proceeding were "unusual" and says that carriers will "bear a substantial, initial burden of demonstrating the circumstances that preclude reliance on publicly available data.")

[12] The models are used to calculate investment when a piece of equipment is used to provide more than one service and must be allocated among them. If equipment provides only one service, a model need not be used since no allocation is necessary.

[13] Joint Petition at 7.

[14] *Id.* at 7.

[15] *Id.* at 8.

[16] *Id.* at 6-7.

[17] Joint Petition at 4, *citing Commission Requirements for Cost Support Material to be Filed with Open Network Architecture Access Tariffs*, 7 FCC Rcd 521, 524 (Com. Car. Bur. 1991).

[18] Joint Petition at 11.

[19] *Designation Order*, 8 FCC Rcd at 5135 and n.24.

[20] Declaration of Julian L. Brice, Manager-Cost Operations for Ameritech (July 28, 1993); Declaration of Ruth Durbin, Assistant Manager - Access Filings for Bell Atlantic (July 28, 1993); Declaration of Hilmar F. Durden, Manager, Economic Analysis for BellSouth (July 28, 1993); Declaration of Curt Hopfinger, District Manager-Product Development Costs and Regulatory for Southwestern Bell (July 27, 1993); Declaration of James J. Lechtenberg, Director of Marketing and Product Information for Pacific Bell (July 28, 1993); Declaration of Francis J. Murphy, Associate Director - Interstate Access and Carrier Services for Teleselector Resources Group (July 28, 1993); Declaration of Robert Sigmon, Vice President - Regulatory Affairs for Cincinnati Bell Telephone Company (July 28, 1993); Declaration of Martin W. Clift, Director of Regulatory Matters for the Southern New England Telephone Company (July 29, 1993); Declaration of Kenneth A. Moreland, Staff Administrator - New Services Pricing, GTE Telephone Operations (July 28, 1993); Letter from Richard D. Lawson, Director of Federal Regulatory Relations, United Telephone Companies, to Gregory J. Vogt, Federal Communications Commission (July 29, 1993) (did not use a model but would have had to use one if they had wanted to precisely determine the capital costs for vertical features); Affidavit of Barbra H. Stock, Manager, Switching Cost Modeling, US West Communications, Inc. (July 29,1993) (calculation of most 800 data base costs without use of the model would be 0* "extremely difficult and expensive," calculation of vertical features costs without the model would be impossible).

[21] Cincinnati Bell's Comments at 1; Northern Telecom's Comments at 2.

oppose the waiver requests in the petitions.[22] Ad Hoc argues that the petitions fail to deal with the distinction between using a cost model to determine exogenous costs for basic query service and using it to identify non-exogenous costs associated with 800 database vertical services. National Data states that, without the cost models or other methodology to provide some context for the cost data which the LECs have produced, the cost information produced by the LECs is meaningless. National Data argues that the interests of the LECs can be safeguarded through protective orders.[23] Northern Telecom objects to disclosure of the costing models because it would result in the public disclosure of Northern Telecom's trade secrets, which would place it at a severe competitive disadvantage with respect to other equipment vendors.[24] Northern Telecom argues that the Bureau was mistaken when it indicated in the *Designation Order* that the costing models used in this proceeding do not contain the confidential information of third parties.[25] Sprint states that the extreme measures implemented to protect the confidentiality of the models and vendor data in the ONA proceeding seriously impeded meaningful analysis of the reasonableness of ONA rates by intervenors.[26]

7. The participating BOCs replied that some LECs were able to develop basic query exogenous costs without the use of a cost model because they used only dedicated facilities to provide the service. However, the participating BOCs argue that other LECs use shared facilities, such as SCPs and links, to provide basic 800 data base query service and therefore need to use CCSCIS to develop exogenous costs for that service. However, the participating BOCs acknowledge that even some LECS that have claimed exogenous treatment for shared facilities have developed ancillary means for identifying costs specific to 800 database and did not need to use a cost model to determine the investment needed to provide the 800 database basic query service.[27]

IV. US WEST PETITION

8. US West argues that its Switching Cost Model (SCM) contains confidential US West financial information and is a US West trade secret. It also asserts that the vendor inputs to the model are extremely confidential and claims that a Commission requirement that they be disclosed could cause the vendors to refuse to provide confidential information in the future.

V. GTE PETITION

9. The GTE Service Corporation (GTE) argues that it used a cost model which is proprietary to it and contains information proprietary to some of its vendors. GTE states that the model contains information that constitutes trade secrets. GTE contends that it has furnished enough information for the Commission to resolve all controversies without using confidential data and that there is no need for further submissions.[28]

VI. DISCUSSION

10. All of the petitions raise the same issue and will be discussed together. The issue before us is whether, in the exercise of our discretionary authority, we should grant a waiver of our requirement that the LECs disclose the cost support for the investment costs for their 800 data base tariff filings.[29] As the Commission has previously noted,[30] this issue requires that we address two competing but fundamental policies. The first policy is that access to relevant information is preferred because it enables interested persons to participate fully in a Section 204 investigation, 47 U.S.C. § 204. The second and contrasting policy is the long-protected interest in maintaining the private, confidential status of commercial and financial information, including trade secrets.

11. In the present case, we believe that a disclosure of this information will aid the discharge of the agency's functions. The 800 telecommunications services are widely used by business to provide customer support, marketing and transaction processing. The database query rates that are established in this proceeding will be reflected in the overall 800 rates that end-users must pay. Portability of 800 numbers, and the competition among interexchange carriers that it makes possible, are dependant in part on establishing reasonable query rates in this proceeding. Excessive query charges could diminish the benefits that 800 number portability and the resulting competition can bring to end-users of 800 telecommunications service by diminishing demand for this service. The 800 database services are provided through an infrastructure created to provide a wide range of database services. The CCSCIS model calculates how much investment is required to provide each service. In turn, that investment is used to calculate many of the direct costs of providing a service. If a model produces an inaccurate investment figure, either because the model is flawed or because it has been manipulated, that inaccuracy will be translated into inaccurate costs for the

[22] Ad Hoc Comments at 1; Allnet Comments at 1; MCI Comments at 1; National Data Comments at 1; Sprint Comments at 6.

[23] National Data Comments at 7.

[24] Northern Telecom's Comments at 2. Equipment vendors also object to the disclosure of their confidential information in letters attached as exhibits to the Joint Petition. *See* Letter from M.R. Bruening to James F. Britt (August 23, 1993) ("The degree of competitive harm is such that even the smallest risk that the non-disclosure agreement might be violated is sufficient... to lead AT&T-[Network Systems] to the conclusion that this recommended approach is not acceptable."); letter from William R. Tempest to James Britt (August 24, 1993) (says that disclosure under protective agreements is "unacceptable. Regardless of the safeguards imposed, at least one of our major competitors would have access to highly sensitive information concerning our products."); letter from John Beall to James F. Britt (August 13, 1993) ("information provided by Northern Telecom to Bellcore in connection with the CCSCIS model is similar to that provided... with respect to Bellcore's SCIS model...." It would object to disclosure under a protective agreement.); letter from L. Michelle Boeckman to Robert McKenna (September 16, 1993) ("strenuously protests ... proposed public release in connection with the 800 data base tariffs of Ericsson's proprietary information....").

[25] Northern Telecom Comments at 2, *citing Designation Order*, 8 FCC Rcd at 5135.

[26] Sprint Comments at 3.

[27] Participating BOCs' Reply at 10.

[28] GTE Reply at 3.

[29] *Designation Order*, 8 FCC Rcd 5135-36.

[30] *See Commission Requirements for Cost Support Material to be Filed with Open Network Architecture Access Tariffs*, 7 FCC Rcd 1526, 1531 (Com. Car. Bur. 1992) (*SCIS Disclosure Order*).

service in question. The benefit of allowing interested parties to examine and test the cost models is that they will be able to either detect flaws in the model or find ways that it could potentially be manipulated. With this knowledge, the interested parties could then examine the direct cases of the LECs to determine whether the investment calculated by the computer models is affected by any of these sources of error. Interested parties can bring experience and resources to this analysis that are not otherwise available to the Commission, thus improving the accuracy of the rates and thereby benefiting the public. We do not find the disclosure alternative proposed in the Joint Petition to be an acceptable alternative because the participating BOCs propose that interested parties would receive only edited documentation and would not receive any version of the software.

12. The crux of the petitioners' arguments is that they can only develop rates for 800 data base by using a cost model that contains confidential and proprietary information. However, with regard to costs incurred to provide basic query service, only some companies need to allocate costs for shared equipment. Even those companies need only use it for a relatively small portion of their investment, the shared facilities. The participating BOCs concede that even some LECs that allocate shared facilities have developed "ancillary mechanisms" for differentiating the 800 database exogenous costs from costs related to other services.[31] The Commission has not yet decided whether to grant exogenous treatment for some or all of the claimed costs, but we find that they can be allocated by other means, such as the relative weighted volume of queries for each of the services. Therefore, if contractual obligations to third party vendors prevent the LECs from disclosing their cost models on the record, they should use another method of developing cost support that can be disclosed on the record. The LECs believe that such methods are not sufficiently precise. We would encourage them to be as precise as possible but, if the choice comes down to one between precision and public disclosure, we opt for public disclosure. This should eliminate the need to rely on the equipment vendors' confidential and proprietary information and, therefore, eliminate their concerns.

13. In the ONA proceeding, the Commission affirmed the Bureau's conclusion that the information provided by the equipment vendors was confidential and proprietary and exempt from disclosure under Section 552(b)(4) of the Freedom of Information Act, 5 U.S.C. § 552(b)(4). Further, the Commission affirmed the Bureau's finding that a non-disclosure agreement alone was not sufficient to protect the vendor's interests or the Commission's interest in program effectiveness.[32] The Commission stated that access to vendor pricing information in the highly competitive switch market would significantly harm competitors in that market.[33] Those procedures allowed the LECs to provide cost support based on models that were disclosed to interested parties only on a restricted basis. However, the Commission has recognized that unusual procedures were essential in that proceeding and would not be employed in the future without substantial justification.[34]

14. The LECs have failed to demonstrate that using the ONA approach is reasonable in this case. There is good reason for using different approaches in the two proceedings. In the ONA proceeding, the LECs had to calculate the investment required to produce many dissimilar services that could be provided through the same switch. It was also critical that we calculate costs for the Basic Service Elements (BSEs) as accurately as possible. In the 800 database proceeding, however, the shared facilities are currently only used to provide a few services of similar nature. These services typically involve queries to a database and the relative costs can be allocated by some means other than the CCSCIS cost model. The LECs argue that the determination of vertical features investment involves the kind of calculations that require a cost model. While the LECs are correct, the reality is that the seven BOCs estimate annual revenues of approximately $69 million from basic query services but only $6 million from vertical services.[35] We find that the vertical services are incidental to the basic query service and we conclude that the public interest would suffer more by failing to make public disclosure of the cost support for both basic 800 database services and vertical features than it would gain by having a more precise calculation of costs for vertical features. In the present case, the petitioners have not shown substantial justification for using non-disclosed cost support because, for the calculation of the exogenous costs incurred to provide basic 800 database query service, there are alternative methods that can be disclosed without revealing proprietary or confidential LEC or third party information. Vertical features involve such relatively small revenues that they are incidental to the basic 800 database query and the LECs' desire to use cost models to calculate vertical features rates does not provide substantial justification for the LEC's request to rely on non-disclosed cost support.

15. Alternatively, some LECs may prefer to continue to use their cost model. We would allow them to do so, provided that they release all relevant information to interested parties that signed protective agreements. In this situation, we find that disclosure to the public is not necessary as long as interested parties that execute protective agreements are given reasonable access to the information. We would enforce such agreements by issuing an order requiring interested parties to honor the agreements. We will entertain revised waiver requests from LECs wishing to pursue this option.

16. Accordingly, IT IS ORDERED that the petitions for waiver of the *Designation Order's* requirement to disclose 800 database cost support filed by the participating BOCs, US West and GTE, ARE DENIED.

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[31] Participating BOCs' Reply at 10.

[32] *Final ONA Order* at ¶ 78.

[33] *Review of SCIS Disclosure Order*, at ¶ 13.

[34] *Review of SCIS Disclosure Order*, at n.17; *Final ONA Order* at n.163.

[35] Initial reports of actual demand for vertical services indicate that some of the BOCs' revenue forecasts have far exceeded the actual demand. *See* letter from R.W. Fleming to Secretary, Federal Communications Commission (January 13, 1994) (BellSouth projected $2,307,000 in vertical services revenue during the first year, actual revenue for the five months from April 30, 1993 to September 30, 1993 was $8,902); letter from Maureen Keenan to William F. Caton (December 28, 1993) (Bell Atlantic projected $326,846 in vertical services revenue during the first year, actual revenue for the period from 5/93 to 9/93 was $643). These are the only two BOCs for which data is available.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz
Acting Chief
Common Carrier Bureau

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: February 3, 1994

MAINE TELECOMMUNICATIONS GROUP, INC., WFT ACQUISITION CO., AND MCTA, INC. SEEK WAIVER OF SECTIONS 61.41(c) AND 69.3(e)(11) OF THE COMMISSION'S RULES

Pleading Cycle Established

COMMENTS: March 7, 1994
REPLIES: March 21, 1994

On January 27, 1994, the Maine Telecommunications Group, Inc. (MTGI), WFT Acquisitions Co. (WFTAC) and MCTA, Inc. (MCTA) filed a petition for wavier of Sections 61.41 (c) and 69.3 (e)(11) of the Commission's rules. 47 C.F.R. §§ 61.41(c), 69.3(e)(11). Petitioners seek to acquire certain telephone properties from GTE Corporation. Pursuant to individual agreements, MTGI will purchase all issued and outstanding stock of Contel of Maine, Inc; WFTAC will purchase all issued and outstanding stock of Contel of Vermont, Inc.; and MCTA will purchase all issued and outstanding stock of Contel of New Hampshire, Inc.

Petitioners seek waivers so that they may remain and the exchanges they acquire may become subject to rate of return regulation. Petitioners also seek waiver to permit the acquired exchanges to participate in common line pool administered by the National Exchange Carrier Association.

Interested parties may file comments on these petitions for waiver no later than March 7, 1994. Replies should be filed by March 21, 1994. An original and four copies of all comments and replies must be filed in accordance with Section 1.51(c) of the Commission's Rules. 47 C.F.R. § 1.51(c). In addition, one copy of each pleading must be filed with International Transcription Services (ITS), the Commission's duplicating contractor, at its office at 2100 M Street, N.W., Suite 140, Washington D.C. 20037 and one copy with the Chief, Tariff Division, Room 518, 1919 M Street, N.W., Washington, D.C. 20554.

For further information, contact Andrew Mulitz, Tariff Division, Common Carrier Bureau, (202) 632-6917.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

US West Communications, Inc.
and AAD 93-87

Nemont Telephone Cooperative, Inc., Project Telephone Company, and Valley Telecommunications, Inc.

Joint Petition for Waiver of the Definition of "Study Area" contained in Part 36, Appendix-Glossary of the Commission's Rules

and

Petition for Waiver of Sections 61.41(c) and 69.3(e)(11) of the Commission's Rules

MEMORANDUM OPINION AND ORDER

Adopted: January 13, 1994; Released: January 25, 1994

By the Deputy Chief (Operations), Common Carrier Bureau:

1. On July 23, 1993, US West Communications, Inc. (US West), Nemont Telephone Cooperative, Inc. (Nemont), Project Telephone Company (Project) and Valley Telecommunications, Inc. (Valley) filed a joint petition for waiver of the definition of "study area" as set forth in the Appendix-Glossary of Part 36 of the Commission's rules. This waiver would allow the parties to reflect the changes in their study area boundaries that would result from the sale from US West to Nemont and its wholly-owned subsidiaries Project and Valley of 20 rural exchanges in northeastern and south central Montana. US West would exclude these exchanges from its Montana study area; Nemont and Project would add the purchased exchanges to their existing Montana study areas; and Valley would establish a new Montana study area. Nemont, Project and Valley also seek a waiver of the price cap rules at Sections 61.41(c) and (d) and, if needed, 69.3(e)(11), to exempt them from the price cap "all or nothing" rule and to allow Valley to operate as a cost company in the NECA common line and traffic sensitive pools.[1]

2. We placed this petition on public notice on August 4, 1993.[2] The petitioners filed additional information, at staff's request, on September 30, 1993 ("September 30 Supplement"). The Montana Public Service Commission (MPSC) also filed a letter on October 29, 1993, concerning public interest questions, and a letter on November 5, 1993, concerning the allocation of the gains on these sales. On November 30, 1993, the petitioners filed a letter and copy of an MPSC Declaratory Ruling of November 24, 1993, with an accompanying order, approving the sale of various US West exchanges to the petitioners.[3]

I. STUDY AREA WAIVER

3. A study area is a geographical segment of a carrier's telephone operation. Generally a study area represents a carrier's entire operation within a state. Thus, carriers that operate in more than one state typically have one study area for each state, and carriers that operate in a single state have a single study area. Carriers perform their jurisdictional separations at the study area level. For jurisdictional separations purposes, the Commission froze study area boundaries effective November 15, 1984.[4] Carriers wishing to change their study area boundaries can request a waiver of the applicable rule.[5] There are three primary concerns in study area boundary change petitions: first, that the change not adversely affect the universal service fund (USF) support program;[6] second, that the state commission(s) having regulatory authority have no objection to the change;[7] and finally, that there is strong public interest support for a waiver.

Petition

4. The service area in question consists of 20 exchanges being sold by US West in the state of Montana.[8] The proposed transaction is as follows: Nemont will acquire twelve small rural exchanges serving approximately 3,000 lines in northeastern Montana and will combine them with its existing study area. Project will acquire four exchanges serving approximately 1300 lines on the Crow Indian Reservation in south central Montana, and will combine them with its existing study area. Finally, Valley will acquire four exchanges serving approximately 6700 lines in northeastern Montana, and will establish these four exchanges as a new study area. US West seeks a waiver to exclude these 20 exchanges from its existing Montana study

[1] Section 61.41(d), 47 C.F.R. §61.41(d), is not applicable here, and the parties' request for waiver of that Section is accordingly dismissed.

[2] *See* Public Notice, 8 FCC Rcd 5485 (Com. Car. Bur. 1993). Comments and Reply Comments are listed at Attachment A herein.

[3] MPSC USWC Docket No. 93.5.23, November 24, 1993.

[4] *See* MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, 49 Fed. Reg. 48325 (December 12, 1984) (*1984 Joint Board Recommended Decision*), adopted by the Commission, 50 Fed. Reg. 939 (January 8, 1985) (*1985 Order Adopting Recommendation*).

[5] 47 C.F.R. Part 36, Appendix-Glossary.

[6] *See 1984 Joint Board Recommended Decision*, 49 Fed. Reg. at 48337, para. 65.

[7] *See generally* Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, CC Docket No. 80-286, Notice of Proposed Rulemaking, 5 FCC Rcd 5974 (1990) (*Study Area Notice*).

[8] We note that other Joint Petitions, from US West and several small telephone companies, were filed with the Nemont joint petition. Those joint petitions were addressed in a separate order. *See* US West and Triangle Telephone *et al.*, DA 93-1581, released Dec. 30, 1993 (*Triangle Order*).

area. US West also proposes to make a permanent downward adjustment to its price cap indexes to reflect the sale of these and other exchanges.[9]

5. US West currently receives no USF support for these exchanges. The Petitioners provide estimates of their access lines and USF support amounts as follows:[10]

	before purchase	after purchase
Nemont		
cost per loop	$ 688	$ 542
loops	3034	5954
annual USF	$765,900	$1,169,068
Project		
cost per loop	$ 495	$ 483
loops	2737	4049
annual USF	$440,338	$614,395
Valley		
cost per loop	N/A	$122
loops	N/A	6710
annual USF	N/A	-0-

6. The petitioners argue that the public interest would be served by grant of the requested waiver. They state that they are in a better position than US West to satisfy the customers' needs and provide a higher level of services. They note that much of the plant in the exchanges being transferred is very old; there are residents in the service areas involved that are not afforded phone service, and others who are served only by multi-party lines. Also, as a result of the lack of modern equipment in these exchanges, equal access and custom calling features currently available in other areas are not available here. Purchasers intend to upgrade services and correct this situation.

7. For example, all three purchasing carriers plan to upgrade all 20 exchanges by installing digital switching facilities and fiber optic facilities to allow for equal access and custom calling services.[11] They argue that local maintenance will be more responsive to customers' needs, and will permit the companies to realize technical and administrative efficiencies.[12] The petitioners all state not only that the planned upgrades will enable their subscribers to have access to existing and future enhanced services, but also that the acquired service areas will benefit from a management more responsive to the local needs of their residential and business subscribers. They argue that the exchanges in question are sparsely populated, low-income areas in need of USF support, and that any impact on the USF is outweighed by the public interest benefits.[13]

Pleadings

8. MCI Communications Corporation (MCI) supports the petitions for waiver, provided that: (1) the purchasers agree not to use the DEM weighting factors specified in our separations rules;[14] and (2) US West retires the assets from its ratebase under the Commission's accounting rules and transfers them to the purchasers at their net salvage value.[15] MCI also proposes that the carriers provide a specified set of data that will help the Commission determine the appropriate regulatory effects and accounting entries.

9. American Telephone and Telegraph Company (AT&T) supports the petitioners' request for the waiver of the price cap "all or nothing" rule but expresses concern regarding the increasing number of requests for study area waivers. It was this concern, AT&T explains, that led it to file a rulemaking petition to establish additional standards for evaluating study area waiver requests.[16]

Discussion

10. The Petitioners' proposals constitute a strong showing that current and potential customers in these exchanges will be better served by the purchasing carriers than by US West. In addition, the MPSC has clearly expressed its support of the transactions.

11. The USF effects are potentially troubling, however. Based upon the Petitioners' estimates, grant of the study area waivers would increase the carriers' USF support by nearly $600,000 annually. These figures represent the transfer of existing assets and operations only; they do not include the costs associated with planned upgrades. If costs associated with the planned upgrades were considered, the effect on the USF would likely be much higher, at least in the near term.[17]

12. We are concerned about the possibility that these sales and a number of similar proposed transactions could, in the aggregate, have a substantial effect on the size of the USF. In this case, the large per loop increase in USF assistance is a matter of great concern. Although the change in assistance may appear small in comparison with the total USF, we cannot ignore the aggregate effect of all such transactions which have been, or may soon be, proposed. Nonetheless, our concerns regarding the USF effect have been mitigated by the Commission's recent adoption of the Joint Board's recommendation for an indexed cap on the USF for the next two years.

13. The Joint Board recently recommended, and the Commission adopted, interim rules that will limit the growth of the USF to the rate of growth in the total number of working loops nationwide.[18] That rate has

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[9] Letter from Laura D. Ford, Vice President-Federal Regulatory US West, filed in this proceeding (August 6, 1993).

[10] Joint Petition at Attachment D.

[11] Joint Petition at 14-16.

[12] *Id.* at 26-30.

[13] *Id.* at 31.

[14] 47 C.F.R. §36.125. DEM weighting is an allocation methodology that serves as a federal subsidy to aid small telephone companies. Carriers allocate central office equipment costs to the interstate jurisdiction based on DEM, or dial equipment minutes. Small companies are allowed to weight the DEM factor (the smallest carriers can triple this number), thus recovering a greater percentage of their costs from the interstate jurisdiction. The increased allocation of costs to the interstate jurisdiction is reflected in increased interstate switched access rates.

[15] MCI Comments in AAD 93-83, 93-84, 93-85, 93-86, 93-87, 93-88, 93-93, and 93-95.

[16] *See* AT&T Petition for Rulemaking, AAD 93-100, filed September 3, 1993.

[17] If we grant the study area waivers, we would expect these carriers' average costs per loop to rise over the next few years, due to an increase in capital costs associated with both the old and new plant investments. As a result, their USF support would likely increase.

[18] Amendment of Part 36 of the Commission's Rules and Establishment of a Joint Board, Docket 80-286, Joint Board

ranged from approximately two percent to approximately 3.5 percent per year. This moderate growth rate will allow the USF to continue to provide adequate support to carriers serving high-cost areas, while preventing excessive USF growth. The Joint Board has also expressed its intention of evaluating the USF as it currently exists, and reforming it to reflect changes in the industry and in technology; the interim rule adopted by the Commission will remain in effect until completion of this permanent USF rulemaking. These actions should be effective in minimizing any adverse effects on the USF that the proposed study area waivers might otherwise cause.

14. Another aspect of the Petitioners' study area waiver requests warrants discussion. Nemont proposes to create study areas that further divide already fragmented service areas in Montana. *See* Nemont-Valley map, appended as Attachment B, from the Joint Petition.[19] This segmentation is at odds with the Commission's frozen study area policy. That policy was established, in part, to prevent carriers from subdividing their study areas so as to maximize their USF amounts.[20] In this case, Nemont's plans to segregate four of the acquired exchanges into a new "Valley" study area appear to have been designed to maximize Nemont's USF amounts. Based upon data provided by the petitioners, we have determined that the total annual USF support for Nemont and its affiliates would be $1.6 million if the Valley exchanges are segregated into a separate study area, compared to $1.0 million if these exchanges are combined in the Nemont study area.

15. The geographic distribution of these four exchanges argues for their inclusion in the Nemont study area (see map at Attachment B herein); they are scattered within the area now served by Nemont, including the twelve exchanges Nemont seeks to acquire here. While we do not object to Nemont's plan to create a new, wholly-owned subsidiary for these exchanges, we see no reason to allow formation of a separate Valley study area, nor to allow the parties discretion in what areas should be combined for jurisdictional separations purposes. We are directing Nemont, whose service area abuts and surrounds these exchanges, to include these four exchanges as part of the Nemont study area for jurisdictional separations purposes, including its USF and DEM calculations.

16. Finally, while we have reviewed the suggestions put forward by MCI, we do not believe it would be appropriate to address them further in this context. MCI's suggestion regarding purchasers' foregoing DEM weighting opens a question that we assume will be addressed in the Joint Board's broad reform proceeding, discussed above. It would be inappropriate for us to evaluate or comment on that issue in this context, and we accordingly refer it to the Joint Board for inclusion in the rulemaking proceeding on USF reform. MCI's proposal regarding purchase price and accounting entries would require at least a rule waiver, and possibly a rule change, and is thus well beyond the scope of this proceeding. Finally, MCI's suggestion that parties file supplemental data roughly coincided with our release of a Public Notice requesting that all parties file additional information, the outlines of which substantially agree with that suggested by MCI.[21]

17. We conclude, based on all the above, that the petitioners have made the necessary showing that Nemont and its affiliates are better prepared to provide high quality telecommunications services to the customers in these 20 exchanges than US West. We further conclude that the MPSC supports the waivers, and that, considering the recent actions by the Joint Board and by the Commission, there will be no significant adverse effect upon the USF if Nemont follows the determination set forth above. Therefore, we grant the study area waiver petitions subject to the requirements discussed herein.

II. PRICE CAP WAIVER

18. The purchasing carriers also seek waiver of the Commission's rules governing the acquisition of price cap companies by non-price cap companies. They seek waiver of rule Section 61.41(c) to allow them to operate as rate of return companies, not price cap companies, despite their acquisition of price cap exchanges. Comments received on the price cap waiver requests were consolidated with the study area comments; see Attachment A.

19. Section 61.41(c) of the Commission's rules provides that when a non-price cap company acquires a price cap company or any part thereof, the acquiring company shall become subject to price cap regulation.[22] Under this rule, the purchasers' acquisitions of the US West exchanges obligate them to exit the NECA pools and become subject to price cap regulation. The purchasers contend that the rule's application here would be contrary to the public interest.[23] They note that a major factor in each of the proposed transactions is the purchaser's plan to upgrade the quality of local exchange service by installing digital switches and other appropriate technologies. They state that they are small cost companies and participants in the NECA pool, and that continued participation in the pools is essential to their financial integrity and the maintenance of telephone service to their rural and small-town customer base.

20. Further, the purchasers state that they have no incentive, ability, or inclination to "game" the Commission's price cap policies. They accordingly request a waiver of the §61.41 "all or nothing" rule and of the concomitant effects of §69.3. They note that there is no relationship among the parties to the proposed sales that would allow any of these companies to shift costs as a consequence of these sales. They also argue that they are not using these sales as a means of changing the system of regulation that applies to them. Finally, the purchasers state that a requirement that they withdraw from the NECA pools and operate as price cap companies would subject them to administrative and

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Recommended Decision, FCC 93J-3 (released Dec. 10, 1993) (*1993 Joint Board Recommendation*); Report and Order, FCC 93-549 (released Dec. 23, 1993) (*1993 Order Adopting Recommendation*).

[19] Joint Petition at Attachment B.

[20] See *1984 Joint Board Recommended Decision* at para. 65, and *1985 Order Adopting Recommendations* at para. 1.

[21] Public Notice, DA 93-1093, released Sept. 7, 1993.

[22] 47 C.F.R. §61.41(c)(2). Purchasers also request waiver of a related rule, Section 69.3(e)(11), to allow them to remain in the NECA pools.

[23] *See, e.g.*, Range Joint Petition at 19-22.

financial burdens that would jeopardize their ability to meet their technological upgrade commitments to customers.

21. The Commission's rules governing mergers and acquisitions provide that when a rate of return company and a price cap company merge, or when one company acquires the other, the resulting company must comply with price cap regulation within a year of the transaction.[24] The rationale for this rule is explained in the *LEC Price Cap Reconsideration Order*. First, in the absence of the rule, a company might attempt to shift costs from its price cap affiliate to its rate of return affiliate, allowing the rate of return affiliate to earn more (because of its greater revenue requirement) without affecting the earnings of the price cap affiliate (*i.e.*, without triggering the sharing mechanism). Second, if a LEC were allowed to go back and forth between rate of return regulation and price cap regulation, it could "game the system" by building up a large rate base under rate of return regulation, then opting for price caps again and cutting its costs to an efficient level.[25] The Commission noted, however, that "in some cases, the efficiencies created by the purchase and sale of |a few| exchanges may outweigh the threat of 'gaming the system.' Such cases might justify narrow waiver of the all-or-nothing rule."[26]

22. There is good cause to grant these waivers of the all-or-nothing rule. The first concern underlying adoption of the rule -- cost-shifting between affiliates -- is not at issue here. Neither US West nor any of the purchasing companies is seeking to maintain separate affiliates under different systems of regulation. The second concern -- allowing a company to use mergers and acquisitions as a means of choosing regulatory systems and "gaming" -- likewise appears inapplicable in this case. Except for exchanges that it has sold, US West remains regulated under price caps; it retains no ability to bring any exchange it has sold back under price caps.

23. Further, the Commission has always been sensitive to the administrative burdens imposed on small carriers by the application of Commission rules.[27] In the *LEC Price Cap Order*, the Commission recognized that small telephone companies should not be forced into a regulatory regime that was designed based largely on the historical performance of the largest LECs. The Commission therefore made price cap regulation optional for carriers smaller than the largest eight. Given the Commission's reservations about mandatory application of the price cap plan to carriers other than GTE and the Regional Bell Companies, our application of the all-or-nothing rule must take into account the companies' preferences, particularly for small carriers.

24. We therefore grant the requested waivers of Section 61.41 of our rules. For the present, the purchasing carriers will be regulated under rate of return. These companies also request waiver of Section 69.3, to allow them to continue to participate in the NECA pools. Because we are waiving Section 61.41, allowing them to remain under rate of return regulation, they need not withdraw from the NECA pools, and Section 69.3 is not triggered, so no waiver is necessary. As with any other rate of return carrier, these companies will be free to elect price cap regulation in the future, provided they withdraw from the NECA pools.

25. We note that this sale of exchanges by US West is only one of many planned sales of high-cost rural exchanges. Because US West's price caps indexes were established with these exchanges as part of its network, the numerous sales of exchanges by US West will most likely significantly alter the network costs that comprise the basis of its price caps indexes. Accordingly, the granting of these waivers should not be construed as precluding a possible reevaluation of US West's price cap indexes to reflect the effects of these sales.

III. ORDERING CLAUSES

26. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §154(i), and Sections 0.91 and 0.291 of the Commission's Rules, 47 C.F.R. §§0.91 and 0.291, that the Joint Petition of US West Communications, Inc. and Nemont Telephone Cooperative, Inc., Project Telephone Company, and Valley Telecommunications, Inc. for waiver of Part 36, Appendix-Glossary, of the Commission's rules, ARE GRANTED to the extent discussed above.

27. IT IS FURTHER ORDERED that the Petitions of Nemont Telephone Cooperative, Inc., Project Telephone Company, and Valley Telecommunications, Inc. for waiver of Section 61.41(c) of the Commission's rules, 47 C.F.R. §61.41(c), ARE GRANTED.

28. IT IS FURTHER ORDERED that the Petitions of Nemont Telephone Cooperative, Inc., Project Telephone Company, and Valley Telecommunications, Inc. for waiver of Section 61.41(d) of the Commission's rules, 47 C.F.R. §61.41(d), ARE DISMISSED.

29. IT IS FURTHER ORDERED that the Petitions of Nemont Telephone Cooperative, Inc., Project Telephone Company, and Valley Telecommunications, Inc. for waiver of Section 69.3(e)(11) of the Commission's rules, 47 C.F.R. §69.3(e)(11), ARE DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Gerald P. Vaughan
Deputy Chief (Operations)

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[24] Policy and Rules Concerning Rates for Dominant Carriers, *Second Report and Order*, 5 FCC Rcd 6786 (1990) and *Erratum*, 5 FCC Rcd 7664 (1990) (*LEC Price Cap Order*), *modified on recon.*, 6 FCC Rcd 2637 (1991)(*LEC Price Cap Reconsideration Order*), *petitions for further recon. dismissed*, 6 FCC Rcd 7482 (1991), *further modified on recon.*, 6 FCC Rcd 4524 (1991) (*ONA/Part 69 Order*), *petitions for recon. of ONA/Part 69 Order pending*, District of Columbia Public Service Commission v. FCC, No. 91-1279 (D.C. Cir. June 14, 1991), *appeals of LEC Price Cap Order affirmed sub nom.* National Rural Telecom Association V. FCC, 988 F.2d 174 (D.C. Cir. 1993).

[25] *LEC Price Cap Reconsideration Order*, 6 FCC Rcd 2637, 2706.

[26] *Id.* at note 207.

[27] *See, e.g.*, Regulation of Small Telephone Companies, CC Docket No. 86-467, Notice of Proposed Rulemaking, 2 FCC Rcd 1010 (1986); Report and Order, 2 FCC Rcd 3811 (1987); Order on Reconsideration, 3 FCC Rcd 5770 (1988).

Common Carrier Bureau

APPENDIX A

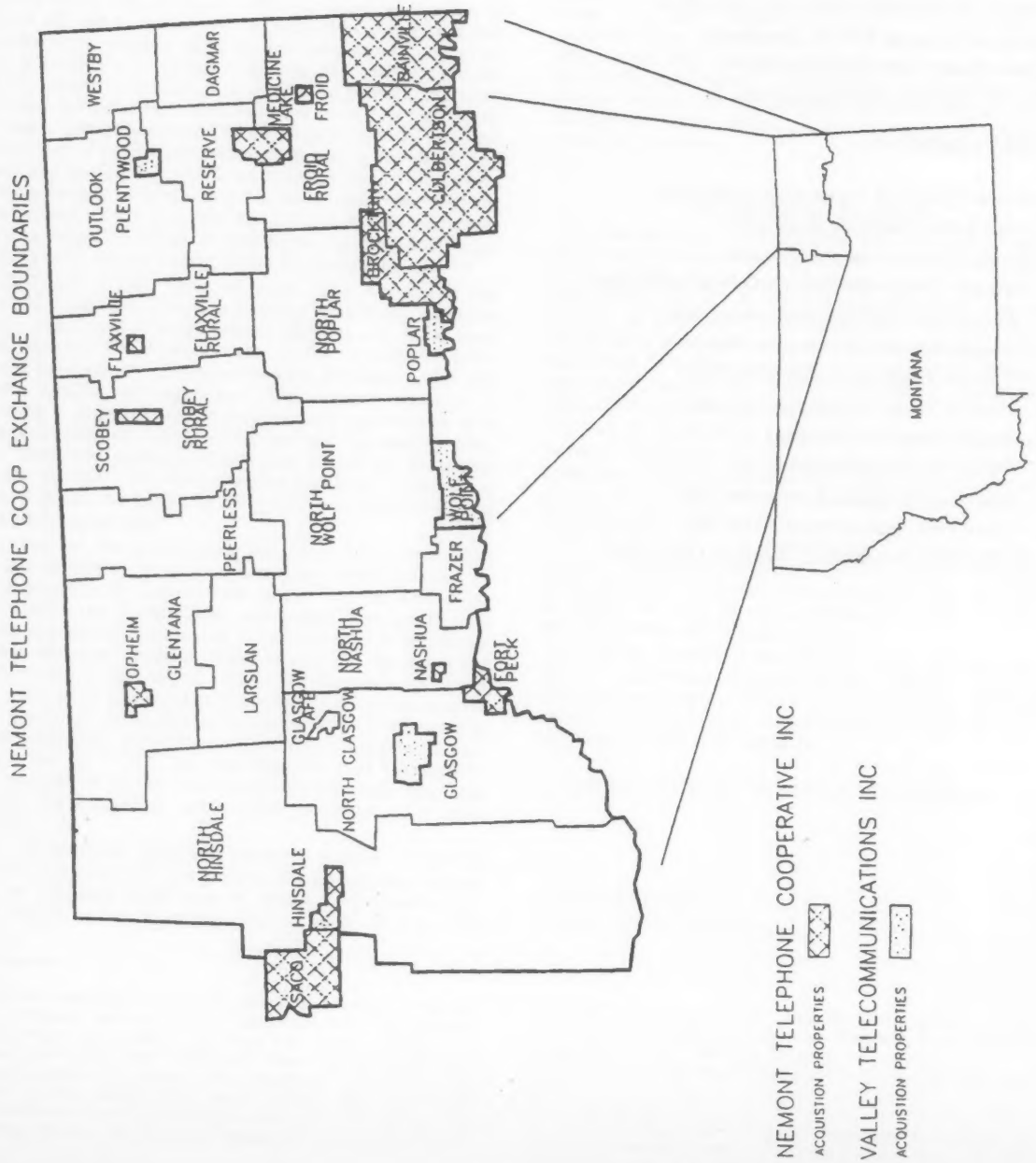
COMMENTS

American Telephone and Telegraph Company
MCI Communications Corporation
National Telephone Cooperative Association
National Exchange Carrier Association
United States Telephone Association
Ex Parte US West Communications, Inc.

REPLY COMMENTS

National Telephone Cooperative Association
United States Telephone Association
US West Communications, Inc. and
Triangle Telephone Cooperative Association, Inc.
Central Montana Communications, Inc.
Range Telephone Cooperative, Inc.
3 Rivers Telephone Cooperative, Inc.
Nemont Telephone Cooperative, Inc.
Project Telephone Company
Valley Telecommunications, Inc.
Blackfoot Telephone Cooperative, Inc.
Clark Fork Telecommunications, Inc.
US West Communications - Reply to Oppositions

ATTACHMENT B



Before the
Federal Communications Commission
Washington, D.C. 20554

CC Docket No. 89-360

In the Matter of

Amendment of Part 32 of
the Commission's Rules to
Implement Statement of
Financial Accounting
Standards No. 96, Accounting
for Income Taxes

REPORT AND ORDER

Adopted: January 31, 1994; Released: February 8, 1994

By the Commission:

I. INTRODUCTION

1. On March 11, 1993, the Commission released a Further Notice of Proposed Rulemaking (FNPRM)[1] that proposed to amend Part 32, Uniform System of Accounts for Telecommunications Companies,[2] to incorporate new accounting practices adopted by the Financial Accounting Standards Board (FASB)[3] in Statement of Financial Accounting Standards No. 109, "Accounting for Income Taxes" (SFAS-109). SFAS-109 became mandatory under generally accepted accounting principles (GAAP) for accounting periods beginning after December 15, 1992. The FNPRM proposed to incorporate into Part 32 the accounting procedures for income taxes set forth in SFAS-109. In addition, the FNPRM sought comment on the rate base treatment to be given to the proposed new accounts and on the compatibility of these new accounts with the Commission's regulatory policies and procedures. Comments and reply comments were filed by the parties listed in Appendix A. For the reasons discussed in the succeeding paragraphs, we adopt the procedures proposed in the FNPRM with some modification.

II. BACKGROUND

2. In a report and order adopted in CC Docket No 84-469,[4] the Commission decided to incorporate GAAP into its Uniform System of Accounts (USOA) and to update the USOA for new GAAP pronouncements when regulatory considerations warranted their adoption. In keeping with this policy towards GAAP, the Commission, on August 18, 1989, released a Notice of Proposed Rulemaking (NPRM)[5] proposing to amend our accounting rules so that they would be consistent with the requirements set forth in SFAS-96. In accordance with SFAS-96, the NPRM proposed that companies be required to record future tax liabilities (or benefits) associated with the temporary differences between the tax basis and book basis of an asset or liability. In addition, the NPRM identified and discussed issues related to the implementation of SFAS-96, namely: (1) rate base considerations; (2) accounting for tax liabilities not previously recognized; (3) accounting for the effects of tax rate changes; and (4) accounting for other changes that affect the determination of deferred tax liabilities.

3. SFAS-96 generated a considerable amount of controversy and, in March of 1989, the FASB decided to reconsider it. As a result, the Commission decided to defer action on the NPRM until the FASB completed its proceeding. The FASB completed its proceeding in February 1992 with the adoption of SFAS-109. In most major respects SFAS-109 was very much like SFAS-96. SFAS-109 departed from SFAS-96 primarily in that it simplified the procedures for recording deferred tax assets and liabilities. On March 11, 1993, the Commission released the FNPRM proposing to amend our accounting rules so they would be consistent with SFAS-109.

III. DISCUSSION

4. In the FNPRM we reached several tentative conclusions with respect to the incorporation of SFAS-109 into our accounting rules. We concluded that: (1) adoption of SFAS-109 should be revenue neutral; (2) changes in tax rates should be reflected in the regulatory accounts; (3) deferred taxes should be recorded for tax liabilities not previously recognized; and (4) deferred taxes should be recorded for items that are no longer considered permanent timing differences. A discussion of these and other relevant matters concerning the adoption of SFAS-109 follows.

A. Revenue Neutrality

5. In the FNPRM we tentatively concluded that the requirements of SFAS-109 should be incorporated into Part 32 without increasing or decreasing interstate revenue requirements. To accomplish this, the FNPRM proposed three new accounts to implement the accounting associated with SFAS-109. We also proposed that these accounts be excluded from interstate rate base and revenue requirement determinations. All parties commenting on this area agree with our proposal to implement SFAS-109 on a revenue neutral basis. They overwhelmingly argue that SFAS-109 should not trigger any change in the recovery of income tax expense and that the exclusion of the new accounts from the rate base would be consistent with our goal of

[1] Amendment of Part 32 of the Commission's Rules to Implement Statement of Financial Accounting Standards No. 96, Accounting for Income Taxes, 8 FCC Rcd 1706 (1993).
[2] 47 C.F.R. Part 32.
[3] The Financial Accounting Standards Board is the authoritative standard setting body for accounting practices that are used in the American business community.
[4] Revision of the Uniform System of Accounts for Telephone Companies to Accommodate Generally Accepted Accounting Principles, 50 F.R. 48408, November 25, 1985.
[5] Amendment of Part 32 of the Commission's Rules to Implement Statement of Financial Accounting Standards No. 96, Accounting for Income Taxes, 4 FCC Rcd 6447 (1989).

revenue neutrality. Because we still believe that a revenue neutral approach is the least burdensome and most effective method of implementing SFAS-109, we are implementing SFAS-109 on that basis. See Appendix B, revised Sections 32.1437, 32.4341 and 32.4361.

B. Changes in Tax Rates

6. Under SFAS-109, the effects of tax rate changes are to be reflected in a company's books of account. In the FNPRM we proposed to require the carriers to comply with this SFAS-109 requirement by adjusting their Part 32 accounts for the tax rate changes. For example, under the Tax Reform Act of 1986 the federal income tax rate changed from 46 percent to 34 percent. This change caused carriers to have excess deferred taxes recorded on their books. There is an excess because the taxes were deferred at a 46 percent rate but will be eventually paid at a future time at a lower rate. In addition, with respect to regulated companies, the excess deferred taxes can be categorized as either "protected" amounts or "unprotected" amounts. Protected excess deferred taxes are those excess deferred taxes that are subject to the requirements of Section 203(e) of the Tax Reform Act of 1986 and are related to timing differences caused by using accelerated depreciation for tax purposes and another depreciation method for book purposes. They are considered "protected" because Section 203(e) does not permit regulators to flow back the excess to ratepayers immediately, but instead requires that it be flowed back ratably over the life of the timing difference that gave rise to the excess. If a regulator were to require immediate flow back, the carrier would not be able to use accelerated depreciation methods for tax purposes in the future. Unprotected excess deferred taxes are those excess deferred taxes that resulted from all other timing differences. They are considered "unprotected" because regulators can require that they be flowed back to ratepayers immediately if so desired.

7. In the FNPRM we proposed to account for both protected and unprotected excess deferred taxes in the manner set forth in Section 203(e), *i.e.*, flowing back excess deferred taxes ratably over the life of the timing difference. We believe that using the Section 203(e) method helps accomplish our revenue neutrality goal and avoids potential violations of the IRS normalization rules that might inadvertently occur. All commenting parties agree H& with our proposal.[6] Therefore, to comply with GAAP, we adopt this method. (See Section 32.4361.)

C. Tax Liabilities Not Previously Recognized

8. SFAS-109 requires the recognition of future tax liabilities that were not required to be recognized under the old rules.[7] In the FNPRM we proposed to incorporate this requirement into Part 32. No party objects to this proposal. Since the recognition of these tax liabilities is a requirement of SFAS-109 to be in conformance with GAAP, and there is no overriding public interest reason to do otherwise, we incorporate it in the final rules.

D. Permanent Differences

9. Under SFAS-109, deferred taxes are to be recorded for the temporary differences caused by the use of the deferral method of accounting for investment tax credits (ITCs) and by the accounting for allowance for funds used during construction (AFUDC) related to plant construction financed with equity funds. The FNPRM proposed to adopt this SFAS-109 requirement. Prior to SFAS-109, the temporary differences for the above items were treated as permanent differences between book and tax amounts that did not require deferred tax recognition. No commenter objected to incorporating this SFAS-109 accounting requirement into our rules. Since these temporary differences must be reflected in the tax accounts to be in conformance with GAAP, we incorporate this requirement in our rules.

E. New Part 32 Accounts

10. In the FNPRM, we proposed adding three new Part 32 accounts and requested comment on whether the accounts we proposed were necessary, whether more accounts were needed, and whether the accounts we proposed were needed for price cap carriers. We proposed to add Account 1437, Recoverable regulatory deferred charge, Account 4341, Net deferred tax liability adjustments, and Account 4361, Deferred regulatory liability. Account 1437 would be used to record amounts of future revenue that will be needed to pay future taxes payable. Account 4361 would be used to record future revenue reductions attributable to decreases in taxes payable. Account 4341 would reflect adjustments to accumulated deferred taxes caused by items such as tax rate changes and amounts accounted for under the flow through method.

11. All respondents agree that the three proposed accounts are needed to implement SFAS-109 for all carriers, including price cap carriers. New York, however, believes that additional accounts are necessary to allow adequate tracking of the tax implications of SFAS-109. New York states that its policy on SFAS-109 requires the offsetting entries to the regulatory asset/liability accounts to be recorded at their gross amounts in distinct deferred income tax asset and liability accounts. Thus, New York requests the Commission to reconsider its netting of these amounts in Account 4341 and instead establish two new deferred tax asset accounts. New York also disagrees with the current Part 32 requirement that calls for offsetting deferred tax debit and credit balances in Account 4340. New York believes that this practice creates a "hodge-podge of deferred taxes" and that it misleads financial statement users. As an alternative, New York suggests that carriers should be required to report separately the deferred tax debits and credits that are currently recorded in Account 4340.

12. While it is true that Account 4341 reflects amounts related to both deferred tax assets and deferred tax liabilities, this is the preferred presentation method set forth by the FASB in SFAS-109. We do not believe that additional tax accounts are needed to track the tax implications because these details can be determined by examining

[6] In its comments, Missouri reserves the right to flow back unprotected deferred taxes to its customers for intrastate ratemaking purposes at a different rate than what the FCC prescribes. Our action here determines procedures for federal accounting purposes and will not preclude Missouri from adopting different procedures for its intrastate ratemaking purposes.

[7] Examples of items for which deferred taxes were not previously recorded are capitalized relief and pension costs, allowances for funds used during construction, social security taxes, sales and use taxes, intercompany transactions, and reductions in the tax bases of assets as a result of tax credits.

amounts recorded in Accounts 1437 and 4361. Because we believe that the accounts we proposed are the only accounts needed to implement SFAS-109, we adopt them and propose no additional accounts.

13. We do not agree with New York's proposal that carriers separately report deferred tax assets that are currently reported in Account 4340. The accounting that New York desires was considered and ultimately rejected by the Commission in the Docket 78-196 proceeding that established Part 32.[8] The Commission rejected this accounting because it was not in conformance with GAAP and would be unduly burdensome on the carriers. New York has provided no compelling reasons why we should reconsider this issue. Accordingly, we do not adopt this proposal.

F. Effective Date

14. In the FNPRM we requested comment on whether the effective date of SFAS-109 for regulatory purposes should coincide with the mandatory effective date for financial reporting purposes. The respondents favored several different effective dates for implementing SFAS-109. GTE, New York, and Missouri favor a January 1, 1993 effective date. New York states that GAAP requires this date for calendar year companies since SFAS-109 is effective for years beginning after December 15, 1992. Bell Atlantic and SWBT, on the other hand, support a December 31, 1993 effective date. Bell Atlantic states that since carriers have already implemented SFAS-109 for financial reporting purposes, it would be administratively burdensome to implement it for Part 32 at the same time because this would result in restating the Part 32 books. UCT supports a January 1, 1994 implementation date. UCT states that implementation on a forward looking basis, at the beginning of a year, avoids the unneeded expense of time and resources in restating ARMIS reports and other reports. UCT also states that we should waive Section 1.427(c) of our rules[9] to permit implementation of SFAS-109 for regulatory purposes at the beginning of the calendar year. BellSouth, NYNEX and USTA recommend that implementation of SFAS-109 be prospective only and occur no later than the end of the calendar year in which the Commission issues a final order in this proceeding. USTA also states that the Commission should waive Section 1.427(c), if necessary, to allow carriers to adopt the proposed rules incorporating SFAS-109 at the end of a calendar year. In its reply comments, USTA contends that, while the commenting parties propose three sets of effective dates, the differences among them are inconsequential so long as the carriers are not required to restate their regulatory reports for a mid-year adoption.

15. Under Section 220(g) of the Communications Act[10] the Commission must allow six months notice before mandating accounting rule changes. As a result, the rules set forth in Appendix B will be effective six months after they are published in the Federal Register. However, because there are benefits in implementing SFAS-109 at the beginning of a year and at the same time SFAS-109 is implemented for financial reporting purposes, we will allow carriers to implement these accounting changes prior to the effective date of our rule changes if they so desire.

G. Revenue Requirement Study Waiver

16. NYNEX and USTA propose that the Commission waive the requirements of Section 32.16[11] with respect to filing a revenue requirement study, since SFAS-109 will be incorporated into Part 32 in a revenue neutral manner.

17. Section 32.16 requires carriers to inform the Commission of the date they intend to adopt a new accounting standard for regulatory purposes. We do not believe that a waiver of this requirement would serve the public interest. Since we are allowing carriers to adopt SFAS-109 prior to the mandatory implementation date, we still need to know when individual carriers intend to adopt the rule changes. However, Section 32.16 also requires that the notices of intent be accompanied by studies showing the effect of the accounting changes on the carriers' revenue requirements. Since we are adopting SFAS-109 in a revenue neutral manner, these revenue requirement studies are unnecessary and would not further the purposes of the rule.[12] Therefore, we waive Section 32.16 to the extent it requires such studies in regard to SFAS-109.

H. Other Matters

18. The FNPRM proposed several modifications to our NPRM proposal. With respect to the recognition of deferred tax assets, the FNPRM proposed to require that operating loss and investment tax credit carryforwards be recorded as deferred tax assets in Account 4361 and that valuation allowances be established for deferred tax assets in the subsidiary record categories of Part 32. Concerning the recognition criteria for current/noncurrent taxes, the FNPRM proposed that deferred taxes be classified as current or noncurrent based on the asset or liability that gave rise to the temporary difference. In cases where there is no related asset or liability, we proposed that the classification would be determined by the expected reversal date of the temporary difference. No party opposed any of these proposals. Since these proposals are necessary to comply with SFAS-109, we adopt them.

19. Several parties suggest minor changes to the language of proposed Accounts 1437, 4341, and 4361. GTE, NYNEX, SWBT, UCT, and USTA suggest that Accounts 1437 and 4361 be renamed Deferred Tax Regulatory Asset and Deferred Tax Regulatory Liability, respectively. These parties believe that the new names would more clearly describe the purpose and functions of the accounts. Bell Atlantic, BellSouth, GTE, NYNEX, and USTA suggest that the description for Account 1437 be expanded to specify how to handle reductions to the account. These parties believe that this would clarify the specific accounting entries to be made in this account and would provide consistency between the descriptions for Accounts 1437 and

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[8] Revision of the Uniform System of Accounts and Financial Reporting Requirements for Class A and Class B Telephone Companies, 51 Fed. Reg. 24745 (July 8, 1986) and 51 Fed. Reg. 43493 (December 2, 1986), *recon. denied in part and granted in part*, 2 FCC Rcd 1086 (1987).

[9] 47 C.F.R. § 1.427(c). Section 1.427(c) specifies that "[i]n cases of alterations by the Commission in the required manner or form of keeping accounts by carriers, notice will be served upon affected carriers not less than 6 months prior to the effective date of such alterations."

[10] *See* 47 U.S.C. § 220(g).

[11] 47 C.F.R. § 32.16.

[12] *See* WAIT Radio v. FCC, 418 F. 2d 1153 (D.C. Cir. 1969).

4361. Bell Atlantic and NYNEX also suggest that language be added to the account descriptions for Accounts 1437, 4341 and 4361 that would clarify the accounting to be used if there are future tax rate changes. Bell Atlantic, BellSouth, NYNEX and USTA suggest that we should not delete the last sentence of Section 32.22(a).

20. We agree that the minor changes suggested by the respondents are worthwhile and will improve the rule language. Accordingly, we will incorporate them into the final rules.

IV. CONCLUSION

21. For the reasons set forth above, we conclude that our accounting rules should be consistent with SFAS-109. Therefore, this Report and Order amends Part 32 of our rules to incorporate into Part 32 the accounting for income taxes set forth in Appendix B.

V. ORDERING CLAUSES

22. Accordingly, IT IS ORDERED that, pursuant to Sections 1, 4(i), 201-205, 218, 220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. $ §§151, 154(i)201-205, 218, 220, 403, Part 32 IS AMENDED as set forth in Appendix B.

23. IT IS FURTHER ORDERED that, pursuant to Section 220(g) of the Communications Act of 1934, as amended, 47 U.S.C. §220(g) and Section 1.427(c) of the Commission's Rules, 47 C.F.R. §1.427(c),:to Part 32 of the Commission's Rules, 47 C.F.R. §32.1 *et seq.*, as set forth in Appendix B, shall be effective six months after publication in the Federal Register.

24. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. §154(i), §32.16 of the Commission's Rules, 47 C.F.R. Section 32.16 IS WAIVED to the extent indicated in paragraph 17 of this Order.

25. IT IS FURTHER ORDERED that, carriers may implement SFAS-109 for federal regulatory purposes prior to the effective date of the new rules.

26. IT IS FURTHER ORDERED that, the Secretary shall provide a copy of this Report and Order to each state utility commission.

27. For further information contact Thaddeus Machcinski at (202) 634-1861.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

APPENDIX A

List of Respondents

Comments

Bell Atlantic Telephone Companies (Bell Atlantic)

BellSouth Telecommunications, Inc. (BellSouth)

GTE Service Corporation (GTE)

Missouri Public Service Commission (Missouri)

New York State Department of Public Service (New York)

New York Telephone Company and New England Telephone and Telegraph Company (NYNEX)

Southwestern Bell Telephone Company (SWBT)

United and Central Telephone Companies (UCT)

United States Telephone Association (USTA)

Reply Comments

USTA

APPENDIX B

Part 32--|Amended|

Part 32, Chapter 1 of the Title 47, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 32 continues to read as follows:

Authority: Secs. 4(i), 4(j) and 220 as amend; 47 U.S.C. 154(i), 154(j), and 220 unless otherwise noted.

2. Section 32.22 is amended by revising paragraphs (a), (c), (d) and (f) to read as follows:

Sec. 32.22 Comprehensive interperiod tax allocation

(a) Companies shall apply interperiod tax allocation (tax normalization) to all book/tax temporary differences which would be considered material for published financial report purposes. Furthermore, companies shall also apply interperiod tax allocation if any item or group of similar items when aggregated would yield debit or credit entries which exceed or would exceed 5 percent of the gross deferred income tax expense debits or credits during any calendar year over the life of the temporary difference. The tax effects of book/tax temporary differences shall be normalized and the deferrals shall be included in the following accounts:

4100, Net Current Deferred Operating Income Taxes;

4110, Net Current Deferred Nonoperating Income Taxes;

4340, Net Noncurrent Deferred Operating Income Taxes;

4350. Net Noncurrent Deferred Nonoperating Income Taxes.

In lieu of the accounting prescribed herein, any company shall treat the increase or reduction in current income taxes payable resulting from the use of flow through accounting in prior years as an increase or reduction in current tax expense.

* * * * *

(c) Subsidiary records shall be used to reduce the deferred tax assets contained in the accounts specified in paragraph (a) when it is likely that some portion or all of the deferred tax asset will not be realized. The amount recorded in the subsidiary record should be sufficient to reduce the deferred tax asset to the amount that is likely to be realized.

(d) The records supporting the activity in the deferred income tax accounts shall be maintained in sufficient detail to identify the nature of the specific temporary differences giving rise to both the debits and credits to the individuals accounts.

* * * * *

(f) The tax differentials to be normalized as specified in this section shall also encompass the additional effect of state and local income tax changes on Federal income taxes produced by the provision for deferred state and local income taxes for book/tax temporary differences related to such income taxes.

* * * * *

3. Section 32.103 is amended to add account 32.1437 to the list of accounts to read as follows:

Sec. 32.103 Balance sheet accounts for other than regulated-fixed assets to be maintained:

Balance Sheet Accounts

Account Title	Class A Account	Class B Account
***	***	***
Deferred Tax Regulatory Asset	1437	1437
***	***	***

* * * * *

4. Section 32.1437 is added to read as follows:

Sec. 32.1437 Deferred Tax Regulatory Asset.

(a) This account shall include amounts of probable future revenue for the recovery of future increases in taxes payable. As reversals occur, amounts recorded in this account shall be reduced with a credit entry and a debit entry to Account 4341, Net Deferred Tax Liability Adjustments.

(b) This account shall also be adjusted for the impact of prospective tax rate changes on the deferred tax liability for those temporary differences underlying its existing balance. If the cumulative effect of such adjustments reduce the account to a net credit balance, such balance shall be reclassified to Account 4361.

5. Section 32.4000 is amended to add accounts 32.4341 and 32.4361 to the list of accounts to read as follows:

Sec. 32.4000 Instructions for balance sheet accounts - liabilities and stockholders' equity.

Liabilities and Stockholders' Equity Accounts to be Maintained by Class A and Class B telephone companies:

Balance Sheet Accounts

Account Title	Class A Account	Class B Account
***	***	***
Net Deferred Tax Liability Adjustments	4341	4341
***	***	***
Deferred Tax Regulatory Liability	4361	4361
***	***	***

* * * * *

6. Section 32.4100 paragraph (d) is revised to read as follows:

Sec. 32.4100 Net current deferred operating income taxes.

* * * * *

(d) The classification of deferred income taxes as current or noncurrent shall follow the classification of the asset or liability that gave rise to the deferred income tax. If there is no related asset or liability, classification shall be based on the expected turnaround of the temporary difference.

* * * * *

7. Section 32.4110 paragraph (g) is revised to read as follows:

Sec. 32.4110 Net current deferred nonoperating income taxes.

* * * * *

(g) The classification of deferred income taxes as current or noncurrent shall follow the classification of the asset or liability that gave rise to deferred income tax. If there is no related asset or liability, classification shall be based on the expected turnaround of the temporary differences.

* * * * *

8. Section 32.4340 paragraphs (a) and (d) are revised to read as follows:

Sec. 32.4340 Net noncurrent deferred operating income taxes.

(a) This account shall include the balance of income tax expense related to noncurrent items from regulated operations which have been deferred to later periods as a result of comprehensive interperiod tax allocation related to temporary differences that arise from regulated operations.

* * * * *

(d) The classification of deferred income taxes as current or noncurrent shall follow the classification of the asset or liability that gave rise to the deferred income tax. If there is no related asset or liability, classification shall be based on the expected turnaround of the temporary difference.

* * * * *

9. Section 32.4341 is added to read as follows:

Sec. 32.4341 Net Deferred Tax Liability Adjustments.

(a) This account shall include the portion of deferred income tax charges and credits pertaining to Accounts 32.1437, Deferred Tax Regulatory Asset, and 32.4361, Deferred Tax Regulatory Liability.

(b) This account shall be used to record adjustments to the accumulated deferred tax liabilities recorded in Accounts 4100 and 4340 for:

(1) Tax effects of temporary differences accounted for under the flow-through method or treated as permanent differences.

(2) Reclassification attributable to changes in tax rates (Federal, state and local). As tax rates increase or decrease, the offsetting debit or credit will be recorded in Account 1437 and/or 4361 as required by paragraph (a).

(3) The tax effects of carryforward net operating losses and carryforward investment tax credits expected to reduce future taxes payable that are reported in published financial statements.

(4) Reversals of the tax effects of carryforward net operating losses and carryforward investment tax credits previously recorded in this account at the time they become recognized as reductions in current taxable income and current taxes payable on tax returns.

(c) This account shall be exempt from the vintage year detail record requirements of Section 32.22(e)(2).

10. Section 32.4350 paragraphs (a) and (g) are revised to read as follows:

Sec. 32.4350 Net noncurrent deferred nonoperating income taxes.

(a) This account shall include the balance of income tax expense (Federal, state, and local) that has been deferred to later periods as a result of comprehensive interperiod allocation related to nonoperating temporary differences.

* * * * *

(g) The classification of deferred income taxes as current or noncurrent shall follow the classification of the asset or liability that gave rise to the deferred income tax. If there is no related asset or liability, classification shall be based on the expected turnaround of the temporary difference.

* * * * *

11. Section 32.4361 is added to read as follows:

Sec. 32.4361 Deferred Tax Regulatory Liability.

(a) This account shall include amounts of probable future revenue reductions attributable to future decreases in taxes payable. As reductions occur, amounts recorded in this account shall be reduced with a debit entry and a credit entry to Account 4341, Net Deferred Tax Liability Adjustments.

(b) This account shall also be adjusted for the impact of prospective tax rate changes on the deferred tax liability for those temporary differences underlying its existing balance. If the cumulative effect of such adjustments reduces the account to a net debit balance, such balance shall be reclassified to Account 1437.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: February 9, 1994

ADDITIONAL COMMENT SOUGHT ON EX PARTE PRESENTATIONS (PR DOCKET NO. 93-61)

The Commission has received written memoranda to the Secretary from PacTel Teletrac (PacTel) on January 26, 1994, and from Southwestern Bell Mobile Systems, Inc. (SBMS) on February 2, 1994 and February 7, 1994, summarizing ex parte presentations made concerning the licensing of Automatic Vehicle Monitoring (AVM) systems, currently under consideration in PR Docket No. 93-61. The Commission also has received a written memorandum to the Secretary from MobileVision on February 1, 1994, summarizing an ex parte presentation responding to PacTel's January 26, 1994 ex parte presentation.

It has been determined that PacTel's and SBMS's ex parte presentations raise new issues that warrant giving interested parties an additional opportunity for comment. Specifically, these presentations address alternatives for the licensing of wideband multilateration AVM systems. PacTel espouses the use of Rand McNally Basic Trading Areas (BTAs)[1] as Commission-defined service areas for such systems and proposes a licensing procedure using these service areas. SBMS, on the other hand, suggests the use of Metropolitan Statistical Areas (MSAs) and Rural Statistical Areas (RSAs) as licensing boundaries.

Pursuant to Sections 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(j) and 303(r), we are hereby soliciting additional comment in PR Docket No. 93-61 on these issues. The filings addressed above that include these issues are available for inspection as part of the record in PR Docket No. 93-61 during normal business hours in the FCC Reference Center, Room 239, 1919 M Street, N.W., Washington, D.C. All or part of the text of these filings may be purchased from the Commission's copy contractor, International Transcription Service, 1919 M Street, N.W., Room 246, Washington, D.C. 20554, telephone (202) 857-3800.

Comments on these additional issues must be filed on or before February 25, 1994. Reply Comments must be filed on or before March 7, 1994. To file formally in this proceeding, you must file an original and four copies of all comments and reply comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original and nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments in this proceeding, including those filed in response to this Public Notice, are available for public inspection during regular business hours in the FCC Reference Center.

[1] See Rand-McNally Commercial Atlas and Marketing Guide 36-39 (123d ed. 1992).

By the Chief, Private Radio Bureau.

For additional information about this matter contact John Borkowski, Rules Branch, Private Radio Bureau, FCC, telephone (202) 632-7125.

FEDERAL COMMUNICATIONS COMMISSION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

The Prescription of Revised Percentages of Depreciation pursuant to the Communications Act of 1934, as amended, for:

BellSouth Telecommunications, Inc.

The Chesapeake and Potomac Telephone Company of Virginia

The Chesapeake and Potomac Telephone Company of West Virginia

GTE North Incorporated

GTE South Incorporated

GTE Southwest Incorporated

GTE Virginia

New England Telephone and Telegraph Company

Ohio Bell Telephone Company

Southern New England Telephone Company

U S West Communications, Inc.

MEMORANDUM OPINION AND ORDER

Adopted: January 24, 1994; Released: January 31, 1994

By the Commission:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we prescribe depreciation rates and amortizations for eleven local exchange carriers (LECs) that filed requests for such changes in 1993. We determined these depreciation rates and amortizations after considering the studies underlying the carriers' requests, the views of the state commissions, staff analyses and recommendations.

II. BACKGROUND

2. This Commission is required by the Communications Act of 1934, as amended, to prescribe the depreciation rates[1] that are used to compute depreciation expense for communications common carriers. In accordance with our rules, depreciation rates are prescribed so as to fully depreciate the carriers' investments on a straight-line basis over the life of the associated plant.[2] In order to accomplish this we use the following formula.

$$\text{depreciation rate} = \frac{100\% - \text{accumulated depreciation } \% - \text{future net salvage } \%}{\text{average remaining life}}$$

Both the life and salvage factors are based upon estimates that require periodic review to ensure their reasonableness.

3. It is our practice to review and revise each carrier's depreciation rates and amortizations once every three years. In doing so, we review depreciation rates for approximately one-third of the larger carriers each year. This process begins when carriers submit depreciation studies, which consist of a variety of data related to the carriers' recent plant retirements and plans for future plant retirements along with their preliminary depreciation rate and amortization proposals. Some state commissions provide preliminary proposals as well. The Common Carrier Bureau then independently analyzes carriers' data and proposals and prepares its own preliminary proposals, which are forwarded to the state commissions[3] and the carriers. Representatives from the Bureau, the state commissions and the carriers then meet to discuss the various proposals (the three-way meetings), and at the conclusion of these meetings, the Bureau makes its recommendations. The carriers then formally file for revised depreciation rates that may or may not agree with the Bureau's recommendations and the Bureau issues a Public Notice requesting comments on the proposed depreciation rate changes.

4. This year, in accordance with our triennial schedule, the eleven carriers listed in the caption submitted studies proposing revised depreciation rates and amortizations based upon revised estimates of the primary depreciation factors (*i.e.*, equipment service life, net salvage and retirement patterns). Following the procedures outlined above, the Bureau proposed rates and amortizations in a *Public Notice* released August 6, 1993.[4] Only the Virginia State Corporation Commission filed comments. No reply comments were filed.

III. DISCUSSION

A. The Depreciation Rate Proposals

5. All of the rates and amortizations recommended by the Bureau at the conclusion of the three-way meetings were requested by the carriers in their formal filings and were proposed by the Bureau in the *Public Notice*. No one filed comments objecting to these rates or amortizations. All carriers listed in the caption filed for effective dates consistent with the depreciation rate study dates. These proposed effective dates are also consistent with our *Effec-*

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[1] *See generally* 47 U.S.C § 220(b)(1982). In recent years, we have also prescribed amortization amounts in lieu of depreciation rates to resolve certain depreciation accounting problems. An amortization amount is a specific amount to be charged to depreciation expense each year. *See* Amortization of Depreciation Reserve Imbalances of Local Exchange Carriers, 3 FCC Rcd 984 (1988) (*Amortization Order*); *see also* the Prescription Percentages of Depreciation Pursuant to Section 220(b) of the Communications Act of 1934, as amended for: AT&T-Long Lines Department, 96 FCC 2d 257 (1983); the Prescription of Revised Percentages of Depreciation pursuant to the Communications Act of 1934, as amended for: AT&T Communications *et. al.*, 7 FCC Rcd 1050 (1992).

[2] *See* 47 C.F.R. § 32.2000 (g)(2).

[3] This coordination is conducted pursuant to Section 220(i) of the Communications Act of 1934, as amended, 47 U.S.C § 220(i).

[4] Comments Invited On Depreciation Rate Prescriptions Proposed For Domestic Telephone Carriers, 8 FCC Rcd 5535 (1993) (*Public Notice*).

tive Date Reconsideration Order.[5] We conclude, therefore, that the proposed depreciation rates, amortizations, and effective dates for all carriers are consistent with our depreciation policies and are adequately supported by the carriers' underlying studies. Accordingly, we prescribe those rates, amortizations, and effective dates as shown in the Appendix to this *Order*.

B. Submission of whole-Life Depreciation Parameters

6. In many of the depreciation prescription orders that the Commission has approved since its decision in the *Property Depreciation Order*,[6] the Commission has expressed its concern with the size of the carriers' depreciation reserve imbalances. Because of the rapid rate of technological advancement in the industry, we continue to believe that the carriers' reserve conditions are extremely important. In order to adequately assess the reserve conditions, it is necessary to consider the whole-life rates.[7] As a result, we continue our policy of requiring carriers that seek to change their depreciation rates to include whole-life rates in their filings. These whole-life rates should be developed on the same underlying bases as the requested depreciation rates.

IV. CONCLUSION

7. Having considered the carriers' proposals, the studies upon which those proposals are based, the views and recommendations of the states, the response to the Public Notice, and the Bureau's studies and analyses, we adopt the depreciation rates, amortizations, and effective dates listed in the Appendix. If the states follow our lead, these revised depreciation and amortizations will provide an additional $390 million in annual capital recovery. This additional capital could better position the LECs to upgrade existing plant and accelerate deployment of new telecommunications technology, thus strengthening and enhancing the American telecommunications infrastructure. Such improvements to the infrastructure would benefit the public directly by facilitating the introduction of such services as distance learning and telemedicine. The improvements could also stimulate the American economy indirectly to the extent that they enable telephone companies to provide traditional communications services at lower costs. Such an outcome would lead directly to lower rates for communications services and indirectly to greater productivity and improved economic performance for all sectors of this nation's economy.

V. ORDERING CLAUSES

8. ACCORDINGLY IT IS ORDERED, pursuant to Sections 4(i), 201-205 and 220(b) of the Communications Act of 1934, as amended, 47 U.S.C., §§ 154(i), 201-205 and 220(b), that the percentages of depreciation and amortization amounts set forth in the Appendix to this Order ARE PRESCRIBED, effective on the dates listed.

9. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

[5] Prescription of Revised Percentages of Depreciation pursuant to the Communications Act of 1934, as amended for: Alascom, Inc. et. al., and Policy Regarding Effective Date of Depreciation Prescriptions, 7 FCC Rcd 798 (1992) (*Effective Date Reconsideration Order*). This order mandated the effective date for Commission represcription orders to be January 1 of the study year.

[6] Amendment of Part 31 (Uniform Systems of Accounts for Class A and Class B Telephone Companies), 83 FCC 2d 267 (1980) (*Property Depreciation) reconsideration*, 87 FCC 2d 916 (1981). *Supplemental Opinion and Order*, 87 FCC 2d 1112 (1981).

[7] Whole-life rates are calculated by dividing 100% less the average net salvage percentage by the average service life.

FEDERAL COMMUNICATIONS COMMISSION

Schedule of Annual Percentages of Depreciation for

BELLSOUTH TELECOMMUNICATIONS, INC. - ALABAMA

Effective January 1, 1993

Rate Category Description	Average Remaining Life	Future Net Salvage	Reserve Level	Remaining Life Rate
	(years)	(%)	(%)	(%)
	A	B	C	D=(100%-B-C)/A
2112 Motor Vehicles	3.7	12	53.4	9.4
2113 Aircraft	---	60	40.0	5.0
2115 Garage Work Equipment	10.1	2	29.3	6.8
2116 Other Work Equipment	10.3	2	39.8	5.7
2121 Buildings	34.0	4	23.5	2.1
2122 Furniture	11.8	9	38.0	4.5
2123 Office Equipment	4.3	26	29.5	10.3
2124 Genl Purpose Computers	3.3	5	52.6	12.8
2211 Analog ESS	4.0	2	50.0	12.0
2212 Digital ESS	9.8	2	28.2	7.1
2220 Operator Systems	9.1	2	83.3	1.6
2231 Radio Systems	6.0	0	42.6	9.6
2232 Circuit-Other	5.1	0	49.6	9.9
2232 Circuit-DDS	4.0	2	54.8	10.8
2311 Station Apparatus	4.5	2	38.4	13.2
2341 Large PBX	3.1	-4	41.0	20.3
2351 Public Telephone	2.6	20	66.9	5.0
2362 Other Terminal Equip.	3.2	-4	70.1	10.6
2411 Poles	22.0	-40	43.0	4.4
2421 Aerial Cable Metal	11.0	-14	46.7	6.1
2421 Aerial Cable Fiber	16.1	-20	18.9	6.3
2422 Undergrd Cable Metal	14.4	-22	50.4	5.0
2422 Undergrd Cable Fiber	18.9	-20	20.4	5.3
2423 Buried Cable Metal	13.1	-7	41.8	5.0
2423 Buried Cable Fiber	12.0	-11	18.7	7.7
2424 Submarine Cable	13.0	0	49.7	3.9
2426 Intra-Bldg Netwk Cable	10.2	-11	49.1	6.1
2431 Aerial Wire	15.9	-78	74.9	6.5
2441 Conduit System	47.0	-5	23.4	1.7

The figures in Columns B, C, and D are percentages of gross book cost.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
BELLSOUTH TELECOMMUNCIATIONS, INC. - KENTUCKY

Effective January 1, 1993

Rate Category Description	Average Remaining Life	Future Net Salvage	Reserve Level	Remaining Life Rate
	(years)	(%)	(%)	(%)
	A	B	C	D=(100%-B-C)/A
2112 Motor Vehicles	3.3	15	52.6	9.8
2115 Garage Work Equipment	10.9	1	3.5	8.8
2116 Other Work Equipment	12.2	1	27.3	5.9
2121 Buildings	29.0	3	26.3	2.4
2122 Furniture	7.5	5	33.1	8.3
2123 Office Equipment	4.7	27	14.3	12.5
2124 Genl Purpose Computers	3.6	1	19.4	22.1
2211 Analog ESS	4.0	2	52.2	11.5
2212 Digital ESS	10.5	3	22.7	7.1
2220 Operator Systems	8.0	3	48.7	6.0
2231 Radio Systems	6.6	-5	49.3	8.4
2232 Circuit-Other	5.6	0	38.2	11.0
2232 Circuit-DDS	4.0	2	49.4	12.2
2311 Station Apparatus	4.0	4	62.4	8.4
2341 Large PBX	2.9	-4	54.4	17.1
2351 Public Telephone	2.5	20	71.7	3.3
2362 Other Terminal Equip.	3.3	-4	66.1	11.5
2411 Poles	19.6	-49	45.9	5.3
2421 Aerial Cable Metal	11.2	-10	49.1	5.4
2421 Aerial Cable Fiber	19.3	-13	20.5	4.8
2422 Undergrd Cable Metal	14.5	-24	52.6	4.9
2422 Undergrd Cable Fiber	18.8	-7	18.5	4.7
2423 Buried Cable Metal	12.1	-10	46.0	5.3
2423 Buried Cable Fiber	14.4	-3	15.2	6.1
2424 Submarine Cable	15.1	0	46.5	3.5
2426 Intra-Bldg Netwk Cable	10.3	-6	44.5	6.0
2431 Aerial Wire	11.4	-32	59.9	6.3
2441 Conduit System	47.0	-5	22.3	1.8

The figures in Columns B, C, and D are percentages of gross book cost.

FEDERAL COMMUNICATIONS COMMISSION

Schedule of Annual Percentages of Depreciation for

BELLSOUTH TELECOMMUNICATIONS, INC. - LOUISIANA

Effective January 1, 1993

Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112 Motor Vehicles	3.4	10	56.1	10.0
2115 Garage Work Equipment	12.4	1	-4.5	8.3
2116 Other Work Equipment	11.9	1	13.6	7.2
2121 Buildings	29.0	5	29.7	2.3
2122 Furniture	6.7	2	62.1	5.4
2123 Office Equipment	4.4	27	25.9	10.7
2124 Genl Purpose Computers	3.4	0	33.4	19.6
2211 Analog ESS	4.8	2	51.6	9.7
2212 Digital ESS	10.6	1	24.3	7.0
2220 Operator Systems	7.6	-2	60.6	5.4
2231 Radio Systems	6.7	-5	54.3	7.6
2232 Circuit-Other	5.6	0	46.2	9.6
2232 Circuit-DDS	4.1	2	34.1	15.6
2311 Station Apparatus	4.1	4	28.3	16.5
2341 Large PBX	3.3	-4	37.2	20.2
2351 Public Telephone	2.9	20	63.4	5.7
2362 Other Terminal Equip.	3.0	-4	69.8	11.4
2411 Poles	18.4	-49	47.8	5.5
2421 Aerial Cable Metal	9.6	-17	53.3	6.6
2421 Aerial Cable Fiber	15.8	-20	26.6	5.9
2422 Undergrd Cable Metal	14.8	-20	41.9	5.3
2422 Undergrd Cable Fiber	18.8	-20	26.8	5.0
2423 Buried Cable Metal	10.4	-10	58.9	4.9
2423 Buried Cable Fiber	11.7	-10	31.3	6.7
2424 Submarine Cable	9.5	-1	44.6	5.9
2426 Intra-Bldg Netwk Cable	10.0	-5	53.5	5.2
2431 Aerial Wire	4.5	-4	46.2	12.8
2441 Conduit System	48.0	-5	21.4	1.7

The figures in Columns B, C, and D are percentages of gross book cost.

FEDERAL COMMUNICATIONS COMMISSION

Schedule of Annual Percentages of Depreciation for

BELLSOUTH TELECOMMUNICATIONS, INC. - MISSISSIPPI

Effective January 1, 1993

Rate Category Description	Average Remaining Life	Future Net Salvage	Reserve Level	Remaining Life Rate
	(years)	(%)	(%)	(%)
	A	B	C	D=(100%-B-C)/A
2112 Motor Vehicles	3.0	12	60.1	9.3
2115 Garage Work Equipment	10.2	-2	7.8	9.2
2116 Other Work Equipment	10.2	-2	33.0	6.8
2121 Buildings	31.0	2	22.7	2.4
2122 Furniture	8.7	3	50.3	5.4
2123 Office Equipment	3.9	28	31.8	10.3
2124 Genl Purpose Computers	3.4	0	47.0	15.6
2211 Analog ESS	3.1	2	32.6	21.1
2212 Digital ESS	10.2	3	25.3	7.0
2220 Operator Systems	6.8	3	91.6	0.8
2231 Radio Systems	7.0	-7	61.6	6.5
2232 Circuit-Other	5.1	1	37.7	12.0
2232 Circuit-DDS	4.0	2	37.6	15.1
2311 Station Apparatus	5.3	2	-20.3	22.3
2341 Large PBX	2.8	-4	65.8	13.6
2351 Public Telephone	3.0	20	60.5	6.5
2362 Other Terminal Equip.	3.1	-4	63.0	13.2
2411 Poles	19.0	-62	38.4	6.5
2421 Aerial Cable Metal	10.3	-6	55.1	4.9
2421 Aerial Cable Fiber	16.1	-10	18.6	5.7
2422 Undergrd Cable Metal	14.1	-23	51.8	5.0
2422 Undergrd Cable Fiber	15.1	-20	29.3	6.0
2423 Buried Cable Metal	10.7	-10	47.0	5.9
2423 Buried Cable Fiber	11.3	-5	29.4	6.7
2424 Submarine Cable	11.2	-5	44.8	5.4
2426 Intra-Bldg Netwk Cable	10.6	-12	51.7	5.7
2431 Aerial Wire	15.5	-76	77.4	6.4
2441 Conduit System	47.0	-5	21.8	1.8

The figures in Columns B, C, and D are percentages of gross book cost.

FEDERAL COMMUNICATIONS COMMISSION

Schedule of Annual Percentages of Depreciation for

BELLSOUTH TELECOMMUNICATIONS, INC. - TENNESSEE

Effective January 1, 1993

Rate Category Description	Average Remaining Life	Future Net Salvage	Reserve Level	Remaining Life Rate
	(years)	(%)	(%)	(%)
	A	B	C	D=(100%-B-C)/A
2112 Motor Vehicles	3.7	16	52.8	8.4
2115 Garage Work Equipment	13.3	-1	5.2	7.2
2116 Other Work Equipment	12.6	-1	29.4	5.7
2121 Buildings	29.0	1	28.7	2.4
2122 Furniture	10.1	9	25.8	6.5
2123 Office Equipment	3.9	28	7.0	16.7
2124 Genl Purpose Computers	3.8	2	38.7	15.6
2211 Analog ESS	2.0	3	36.6	30.2
2212 Digital ESS	10.3	4	21.0	7.3
2220 Operator Systems	7.7	5	32.4	8.1
2231 Radio Systems	8.0	0	47.6	6.6
2232 Circuit-Other	5.8	0	42.6	9.9
2232 Circuit-DDS	4.1	2	50.9	11.5
2311 Station Apparatus	3.2	4	55.2	12.8
2341 Large PBX	3.3	-4	42.5	18.6
2351 Public Telephone	2.9	20	60.3	6.8
2362 Other Terminal Equip.	3.0	3	65.8	10.4
2411 Poles	22.0	-48	31.3	5.3
2421 Aerial Cable Metal	10.8	-15	47.6	6.2
2421 Aerial Cable Fiber	20.0	-20	10.0	5.5
2422 Undergrd Cable Metal	14.4	-8	44.3	4.4
2422 Undergrd Cable Fiber	18.9	-20	18.2	5.4
2423 Buried Cable Metal	11.5	-5	45.3	5.2
2423 Buried Cable Fiber	14.6	-9	22.6	5.9
2424 Submarine Cable	13.6	-1	35.1	4.8
2426 Intra-Bldg Netwk Cable	12.5	-10	37.3	5.8
2431 Aerial Wire	14.1	-40	46.9	6.6
2441 Conduit System	46.0	-5	22.8	1.8

The figures in Columns B, C, and D are percentages of gross book cost.

FEDERAL COMMUNICATIONS COMMISSION

Schedule of Annual Percentages of Depreciation for

THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF VIRGINIA

Effective January 1, 1993

Rate Category Description	Average Remaining Life	Future Net Salvage	Reserve Level	Remaining Life Rate
	(years)	(%)	(%)	(%)
	A	B	C	D=(100%-B-C)/A
2112 MOTOR VEHICLES	3.6	18	48.2	9.4
2115 GARAGE WORK EQUIPMENT	10.4	1	14.0	8.2
2116 OTHER WORK EQUIPMENT	9.3	5	27.8	7.2
2121 BUILDINGS	27.0	3	21.2	2.8
2122 FURNITURE	8.6	7	13.1	9.3
2123 OFFICE SUPPORT EQUIP	5.4	12	23.6	11.9
2123 COMPANY COMM. EQUIP	6.2	8	46.8	7.3
2124 COMPUTERS	3.6	7	43.8	13.7
2211 ANALOG SWITCHING	2.4	3	38.6	24.3
2211 CUST. PREM. SWITCHING	---	0	100.0	5.0
2212 DIGITAL SWITCHING	10.4	1	25.5	7.1
2220 DIGITAL OPERATOR SYSTEM	9.6	0	6.1	9.8
2231 RADIO SYSTEMS	8.1	-3	17.7	10.5
2232 DIGITAL DATA SYSTEMS	3.1	0	24.6	24.3
2232 DIGITAL CIRCUIT EQUIP	6.2	0	34.5	10.6
2232 ANALOG CIRCUIT EQUIP	4.3	-3	59.2	10.2
2351 PUBLIC TELEPHONE EQUIP	7.5	10	51.3	5.2
2362 OTHER TERMINAL EQUIP	8.3	18	34.7	5.7
2411 POLES	16.4	-43	40.8	6.2
2421 AERIAL CABLE	13.1	-17	41.2	5.8
2422 UNDERGROUND CABLE	15.4	-1	33.9	4.4
2423 BURIED CABLE	12.0	-4	38.8	5.4
2424 SUBMARINE CABLE	10.8	-8	56.6	4.8
2426 INTRABUILDING CABLE *	14.8	-19	45.7	5.0
2441 CONDUIT SYSTEMS	41.0	0	19.9	2.0

The figures in Columns B, C, and D are percentages of gross book cost.

* Extraordinary retirement amortization for the Intrabuilding Cable Account of $10,118 thousand annually over a five year period ending December 31, 1997.

FEDERAL COMMUNICATIONS COMMISSION APPENDIX

Schedule of Annual Percentages of Depreciation for PAGE 7

THE CHESAPEAKE AND POTOMAC TELEPHONE COMPANY OF WEST VIRGINIA

Effective January 1, 1993

	Rate Category Description	Average Remaining Life	Future Net Salvage	Reserve Level	Remaining Life Rate
		(years)	(%)	(%)	(%)
		A	B	C	D=(100%-B-C)/A
2112	MOTOR VEHICLES	3.2	14	57.8	8.8
2115	GARAGE WORK EQ.	9.4	6	30.8	6.7
2116	OTHER WORK EQ.	8.9	6	28.1	7.4
2121	BUILDINGS	27.0	4	24.4	2.7
2122	FURNITURE	8.6	3	28.1	8.0
2123	OFC. SUP. EQ.	5.3	5	42.6	9.9
2123	COMP COMM EQ	6.0	8	47.9	7.4
2124	COMPUTERS	3.8	5	43.6	13.5
2211	ANALOG SWITCH @	---	10	-176.0	---
2212	DIGITAL SWITCH	10.5	3	23.6	7.0
2220	OPER SYS DIG	9.5	5	34.4	6.4
2231	RADIO SYSTEMS	6.2	3	49.1	7.7
2232	DIG DATA SYS	3.4	1	17.6	23.9
2232	DIGITAL CKT	6.0	1	39.2	10.0
2232	ANALOG CKT	4.6	-2	34.3	14.7
2351	PUBLIC TEL	7.6	4	48.1	6.3
2362	OTH TERM	9.0	11	13.3	8.4
2411	POLES	15.4	-40	46.1	6.1
2421	AERIAL CABLE	13.4	-18	45.1	5.4
2422	UG CABLE	15.5	-14	33.5	5.2
2423	BURIED CABLE	9.8	-7	55.6	5.2
2424	SUBMARINE CABLE	5.6	0	66.0	6.1
2426	INTRABLDG CABLE	9.6	-21	24.8	10.0
2441	CONDUIT SYSTEMS	36.0	8	27.0	2.3

The figures in Columns B, C, and D are percentages of gross book cost.

@ The amortization amount for the Analog Switching Account ordered in FCC 92-38, released January 31, 1992, is continued.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE NORTH INCORPORATED - INDIANA

Effective January 1, 1993

Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112 MOTOR VEHICLES	3.3	13	55.0	9.7
2113 AIRCRAFT	---	55	45.0	5.0
2115 GARAGE WORK EQ	11.4	0	30.9	6.1
2116 OTHER WORK EQ	9.7	2	34.6	6.5
2121 BUILDINGS	33.0	0	20.1	2.4
2122 FURNITURE	8.7	3	63.4	3.9
2123 OFFICE SUPPORT EQ	7.2	1	29.4	9.7
2123 COMPANY COMMUN. EQ	6.7	1	53.5	6.8
2124 GEN PURPOSE COMPUTERS	3.1	5	61.5	10.8
2211 ANALOG ELECTRONIC SW	3.0	2	27.2	23.6
2212 DIGITAL ELECTRONIC SW	9.0	3	32.9	7.1
2215 ELECTROMECHANICAL SW	4.0	-1	77.6	5.9
2220 OPERATOR SYSTEMS	---	-3	103.0	5.0
2231 RADIO SYSTEMS	5.7	-4	98.1	1.0
2232 CIRCUIT EQUIPMENT	5.6	2	43.6	9.7
2351 PUBLIC TELE. TERM. EQ.	---	5	95.0	5.0
2362 OTHER TERMINAL EQ.	4.8	1	81.3	3.7
2411 POLES	15.5	-52	60.4	5.9
2421 AERIAL CBL-METALLIC	12.1	-27	55.0	6.0
2421 AERIAL CBL-NONMETAL	20.0	-10	22.7	4.4
2422 UNDRGRND CBL-METALLIC	15.8	-22	43.8	4.9
2422 UNDRGRND CBL-NONMETAL	22.0	-5	12.9	4.2
2423 BURIED CABLE-METALLIC	12.0	-12	42.2	5.8
2423 BURIED CBL-NONMETAL	21.0	-5	14.9	4.3
2424 SUBMARINE CABLE	4.2	0	89.8	2.4
2426 INTRABLDG NETWORK CBL	12.4	-35	60.9	6.0
2431 AERIAL WIRE	2.6	-60	149.0	4.2
2441 CONDUIT SYSTEMS	40.0	-10	27.1	2.1

The figures in Columns B, C, and D are percentages of gross book cost.

FEDERAL COMMUNICATIONS COMMISSION

Schedule of Annual Percentages of Depreciation for

GTE NORTH INCORPORATED - OHIO

Effective January 1, 1993

Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112 MOTOR VEHICLES	3.6	12	55.3	9.1
2113 AIRCRAFT	2.1	48	38.7	6.3
2115 GARAGE WORK EQ	8.5	0	40.2	7.0
2116 OTHER WORK EQ	8.0	8	39.6	6.6
2121 BUILDINGS	16.6	0	33.9	4.0
2122 FURNITURE	---	5	95.0	5.0
2123 OFFICE SUPPORT EQ	8.3	1	35.7	7.6
2123 COMPANY COMMUN. EQ	8.1	1	47.5	6.4
2124 GEN. PURPOSE COMPUTERS	3.6	5	57.5	10.4
2211 ANALOG ELECTRONIC SW	4.4	-1	43.5	13.1
2212 DIGITAL ELECTRONIC SW	9.9	3	29.9	6.8
2215 ELECTROMECHANICAL SW	3.5	-4	60.9	12.3
2231 RADIO SYSTEMS	3.7	-1	86.1	4.0
2232 CIRCUIT EQUIPMENT	6.2	4	44.2	8.4
2351 PUBLIC TELE TERM EQ	3.9	5	74.4	5.3
2362 OTHER TERMINAL EQUIP	4.9	1	88.4	2.2
2411 POLES	16.6	-52	38.8	6.8
2421 AERIAL CABLE-METALLIC	15.8	-45	54.2	5.7
2421 AERIAL CBL-NONMETALLIC	18.2	-25	15.9	6.0
2422 UNDRGRND CBL-METALLIC	17.3	-31	46.4	4.9
2422 UNDRGRND CBL-NONMETAL	21.0	-16	11.9	5.0
2423 BURIED CABLE-METALLIC	12.6	-11	40.8	5.6
2423 BURIED CBL-NONMETALLIC	22.0	-5	10.7	4.3
2424 SUBMARINE CABLE	11.9	0	55.1	3.8
2426 INTRABLDG NETWORK CBL	11.2	-47	52.1	8.5
2431 AERIAL WIRE	5.9	-61	91.8	11.7
2441 CONDUIT SYSTEMS	39.0	-11	28.0	2.1

The figures in Columns B, C, and D are percentages of gross book cost.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE NORTH INCORPORATED - PENNSYLVANIA

Effective January 1, 1993

Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112 MOTOR VEHICLES	3.0	11	58.4	10.2
2115 GARAGE WORK EQ	9.3	0	43.8	6.0
2116 OTHER WORK EQ	9.1	2	44.8	5.8
2121 BUILDINGS	25.0	5	32.4	2.5
2122 FURNITURE	7.8	5	45.7	6.3
2123 OFFICE SUPPORT EQUIP	6.4	1	44.9	8.5
2123 COMPANY COMMUN. EQ	6.5	1	53.7	7.0
2124 GEN. PURPOSE COMPUTERS	3.1	5	74.3	6.7
2211 ANALOG ELECTRONIC SW	3.2	0	85.6	4.5
2212 DIGITAL ELECTRONIC SW	9.4	3	32.0	6.9
2215 ELECTROMECHANICAL SW	3.5	-2	93.0	2.6
2220 OPERATOR SYSTEMS	10.8	-2	51.0	4.7
2231 RADIO SYSTEMS	2.7	-3	95.8	2.7
2232 CIRCUIT EQUIPMENT	6.2	4	35.8	9.7
2351 PUBLIC TELE. TERM. EQ.	4.3	5	68.5	6.2
2362 OTHER TERMINAL EQUIP.	4.6	1	83.7	3.3
2411 POLES	19.8	-36	46.8	4.5
2421 AERIAL CABLE-METALLIC	14.6	-32	51.0	5.5
2421 AERIAL CBL-NONMETAL	18.1	-10	16.4	5.2
2422 UNDRGRND CBL-METALLIC	15.8	-28	30.6	6.2
2422 UNDRGRND CBL-NONMETAL	21.0	-10	18.2	4.4
2423 BURIED CABLE-METALLIC	12.3	-10	40.6	5.6
2423 BURIED CBL-NONMETAL	18.4	-5	9.9	5.2
2424 SUBMARINE CABLE	17.8	-12	0.0	6.3
2426 INTRABLDG NETWORK CBL	12.4	-40	66.3	5.9
2431 AERIAL WIRE	4.4	-36	104.2	7.2
2441 CONDUIT SYSTEMS	43.0	-6	28.3	1.8

The figures in Columns B, C, and D are percentages of gross book cost.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE NORTH INCORPORATED - WISCONSIN

Effective January 1, 1993

Rate Category Description	Average Remaining Life	Future Net Salvage	Reserve Level	Remaining Life Rate
	(years)	(%)	(%)	(%)
	A	B	C	D=(100%-B-C)/A
2112 MOTOR VEHICLES	3.7	14	46.2	10.8
2115 GARAGE WORK EQ	7.2	0	60.2	5.5
2116 OTHER WORK EQ	8.5	0	44.9	6.5
2121 BUILDINGS	19.9	0	29.8	3.5
2122 FURNITURE	9.1	6	34.9	6.5
2123 OFFICE SUPPORT EQ	7.0	5	29.6	9.3
2123 COMPANY COMMUN. EQ	6.3	5	71.9	3.7
2124 GEN. PURPOSE COMPUTERS	3.7	5	57.5	10.1
2211 ANALOG ELECTRONIC SW	---	-1	101.0	5.0
2212 DIGITAL ELECTRONIC SW	9.9	3	35.6	6.2
2215 ELECTROMECHANICAL SW	2.4	0	80.4	8.2
2220 OPERATOR SYSTEMS	14.5	-3	5.4	6.7
2231 RADIO SYSTEMS	4.2	1	91.5	1.8
2232 CIRCUIT EQUIPMENT	5.9	3	35.5	10.4
2351 PUBLIC TELE TERM. EQ.	4.1	5	91.0	1.0
2362 OTHER TERMINAL EQUIP	4.7	1	86.6	2.6
2411 POLES	13.0	-47	67.9	6.1
2421 AERIAL CABLE-METALLIC	11.7	-33	51.6	7.0
2421 AERIAL CBL-NONMETALLIC	18.6	-20	16.1	5.6
2422 UNDRGRND CBL-METALLIC	16.5	-25	28.1	5.9
2422 UNDRGRND CBL-NONMETAL	18.2	-15	11.6	5.7
2423 BURIED CABLE-METALLIC	11.3	-8	47.6	5.3
2423 BURIED CBL-NONMETALLIC	22.0	-7	15.7	4.2
2424 SUBMARINE CABLE	11.5	-10	56.7	4.6
2426 INTRABLDG NETWORK CBL	11.2	-37	55.5	7.3
2431 AERIAL WIRE	4.3	-80	160.7	4.5
2441 CONDUIT SYSTEMS	39.0	-10	24.6	2.2

The figures in Columns B, C, and D are percentages of gross book cost.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE SOUTH INCORPORATED - ALABAMA

Effective January 1, 1993

Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112 MOTOR VEHICLES	5.3	23	43.0	6.4
2115 GARAGE WORK EQUIP	6.4	0	78.6	3.3
2116 OTHER WORK EQUIP	11.6	3	39.0	5.0
2121 BUILDINGS	31.0	10	13.5	2.5
2122 FURNITURE	11.6	2	54.5	3.8
2123 OFFICE SUPPORT EQUIP	8.3	2	54.0	5.3
2123 COMPANY COMM EQUIP	5.8	0	58.6	7.1
2124 GEN PURPOSE COMPUTERS	2.9	5	73.0	7.6
2211 ANALOG ELECTRONIC SW	1.5	-1	63.3	25.1
2212 DIGITAL ELECTRONIC SW	9.4	5	24.0	7.6
2215 ELECTROMECHANICAL SW	2.4	-3	60.0	17.9
2220 OPERATOR SYSTEMS	13.2	5	8.5	6.6
2231 RADIO SYSTEMS	1.5	0	71.6	18.9
2232 CIRCUIT EQUIPMENT	6.0	3	28.1	11.5
2351 PUBLIC TELEPHONES	5.5	2	63.8	6.2
2362 OTHER TERM EQUIP	---	-2	102.0	5.0
2411 POLES	12.7	-45	38.7	8.4
2421 AERIAL CABLE METAL	14.2	-49	36.6	7.9
2421 AERIAL CABLE NON MET	17.7	-10	19.5	5.1
2422 UNDGRD CABLE METAL	15.3	-20	32.0	5.8
2422 UNDGRD CABLE NON MET	20.0	-2	14.4	4.4
2423 BURIED CABLE METAL	12.3	-10	29.8	6.5
2423 BURIED CABLE NON MET	21.0	-5	16.1	4.2
2424 SUBMARINE CABLE	16.4	-5	27.3	4.7
2426 INTRA BLDG CABLE	15.5	-38	46.1	5.9
2431 AERIAL WIRE	4.3	-85	125.1	13.9
2441 CONDUIT SYSTEMS	43.0	-1	25.9	1.7

The figures in Columns B, C, and D are percentages of gross book cost.

FEDERAL COMMUNICATIONS COMMISSION

Schedule of Annual Percentages of Depreciation for

GTE SOUTH INCORPORATED - SOUTH CAROLINA

Effective January 1, 1993

Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112 MOTOR VEHICLES	4.8	14	41.5	9.3
2115 GARAGE WORK EQUIP	15.0	0	0.0	6.7
2116 OTHER WORK EQUIP	9.2	0	46.2	5.8
2121 BUILDINGS	27.0	6	15.0	2.9
2122 FURNITURE	7.4	5	75.4	2.6
2123 OFFICE SUPPORT EQUIP	8.3	2	73.2	3.0
2123 COMPANY COMM EQUIP	5.8	0	50.1	8.6
2124 GEN PURPOSE COMPUTERS	2.7	5	66.0	10.7
2212 DIGITAL ELECTRONIC SW	9.4	5	32.1	6.7
2220 OPERATOR SYSTEMS	12.5	5	8.8	6.9
2231 RADIO SYSTEMS @	---	0	---	---
2232 CIRCUIT EQUIPMENT	5.0	4	23.9	14.4
2351 PUBLIC TELEPHONES	4.6	2	74.0	5.2
2362 OTHER TERM EQUIP	2.6	-2	89.3	4.9
2411 POLES	14.4	-40	53.3	6.0
2421 AERIAL CABLE METAL	11.2	-36	42.6	8.3
2421 AERIAL CABLE NON MET	18.2	-25	20.8	5.7
2422 UNDGRD CABLE METAL	14.6	-24	27.4	6.6
2422 UNDGRD CABLE NON MET	21.0	-25	19.9	5.0
2423 BURIED CABLE METAL	11.1	-3	29.5	6.6
2423 BURIED CABLE NON MET	22.0	-6	15.0	4.1
2424 SUBMARINE CABLE	5.6	-5	67.7	6.7
2426 INTRA BLDG CABLE	11.4	-33	53.9	6.9
2431 AERIAL WIRE	2.0	-71	170.7	0.2
2441 CONDUIT SYSTEMS	39.0	-1	27.8	1.9

The figures in Columns B, C, and D are percentages of gross book cost.

@ The net service value for the Radio Systems Account is to be amortized over a twenty-four month period ending December 31, 1994.

FEDERAL COMMUNICATIONS COMMISSION

Schedule of Annual Percentages of Depreciation for

GTE SOUTH INCORPORATED - TENNESSEE

Effective January 1, 1993

Rate Category Description		Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112 MOTOR VEHICLES		6.2	7	39.9	8.6
2115 GARAGE WORK EQUIP		15.0	0	0.0	6.7
2116 OTHER WORK EQUIP		11.4	5	41.4	4.7
2121 BUILDINGS		30.0	10	18.7	2.4
2122 FURNITURE		11.4	10	52.3	3.3
2123 OFFICE SUPPORT EQUIP		6.9	2	79.6	2.7
2123 COMPANY COMM EQUIP		5.4	0	62.4	7.0
2124 GEN PURPOSE COMPUTERS		1.9	5	93.7	0.7
2212 DIGITAL ELECTRONIC SW		9.2	10	18.0	7.8
2215 ELECTROMECHANICAL SW	ⓐ	---	-2	-51.4	---
2220 OPERATOR SYSTEMS		17.3	10	-8.8	5.7
2231 RADIO SYSTEMS		4.3	-2	65.3	8.5
2232 CIRCUIT EQUIPMENT		5.3	1	1.5	18.4
2351 PUBLIC TELEPHONES		4.8	2	67.2	6.4
2362 OTHER TERM EQUIP		3.0	-2	86.0	5.3
2411 POLES		12.7	-34	34.5	7.8
2421 AERIAL CABLE METAL		14.5	-35	38.9	6.6
2421 AERIAL CABLE NON MET		18.3	-17	11.1	5.8
2422 UNDGRD CABLE METAL		14.6	-31	30.1	6.9
2422 UNDGRD CABLE NON MET		18.8	-8	8.2	5.3
2423 BURIED CABLE METAL		10.5	-4	33.4	6.7
2423 BURIED CABLE NON MET		21.0	-5	17.7	4.2
2426 INTRA BLDG CABLE		15.4	-25	48.4	5.0
2431 AERIAL WIRE		4.8	-85	149.2	7.5
2441 CONDUIT SYSTEMS		44.0	-1	24.1	1.7

The figures in Columns B, C, and D are percentages of gross book cost.

ⓐ The net service value for the Electromechanical Switching Account is to be amortized over a twenty-four month period ending December 31, 1994.

FEDERAL COMMUNICATIONS COMMISSION

Schedule of Annual Percentages of Depreciation for

GTE SOUTH INCORPORATED - VIRGINIA

APPENDIX

PAGE 15

Effective January 1, 1993

Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112 MOTOR VEHICLES	4.0	7	47.3	11.4
2116 OTHER WORK EQUIP	7.4	5	56.4	5.2
2121 BUILDINGS	32.0	0	20.3	2.5
2122 FURNITURE	5.5	0	92.6	1.3
2123 OFFICE SUPPORT EQUIP	6.7	0	56.7	6.5
2123 COMPANY COMM EQUIP	6.1	-3	41.1	10.1
2124 GEN PURPOSE COMPUTERS	13.3	0	24.6	5.7
2212 DIGITAL ELECTRONIC SW	10.7	5	26.6	6.4
2215 ELECTROMECHANICAL SW @	---	-2	69.1	---
2231 RADIO SYSTEMS	6.4	-2	40.0	9.7
2232 CIRCUIT EQUIPMENT	5.7	0	-10.7	19.4
2351 PUBLIC TELEPHONES	4.5	-3	83.6	4.3
2362 OTHER TERM EQUIP	1.0	-3	93.7	9.3
2411 POLES	14.0	0	15.2	6.1
2421 AERIAL CABLE	13.5	-37	44.4	6.9
2422 UNDGRD CABLE	14.5	-20	22.5	6.7
2423 BURIED CABLE	14.0	-4	42.2	4.4
2426 INTRA BLDG CABLE	11.7	-10	53.6	4.8
2431 AERIAL WIRE	6.6	-40	106.0	5.2
2441 CONDUIT SYSTEMS	35.0	-1	31.5	2.0

The figures in Columns B, C, and D are percentages of gross book cost.

@ The net service value for the Electromechanical Switching Account is to be amortized over a twenty-four month period ending December 31, 1994.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE - VIRGINIA

Effective January 1, 1993

Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112 MOTOR VEHICLES	3.8	20	43.2	9.7
2116 OTHER WORK EQUIP	13.7	0	27.9	5.3
2121 BUILDINGS	28.0	10	17.8	2.6
2122 FURNITURE	17.0	11	23.4	3.9
2123 OFFICE SUPPORT EQUIP	8.3	0	29.5	8.5
2123 COMPANY COMM EQUIP	7.9	0	42.5	7.3
2124 GEN PURPOSE COMPUTERS	3.7	5	11.4	22.6
2212 DIGITAL ELECTRONIC SW	8.7	2	29.2	7.9
2220 OPERATOR SYSTEMS	7.6	0	-51.2	19.9
2231 RADIO SYSTEMS	9.5	0	9.0	9.6
2232 CIRCUIT EQUIPMENT	5.7	5	45.8	8.6
2351 PUBLIC TELEPHONES	7.4	0	45.2	7.4
2362 OTHER TERM EQUIP	8.4	0	65.7	4.1
2411 POLES	13.5	-55	54.8	7.4
2421 AERIAL CABLE	12.8	-10	38.0	5.6
2422 UNDGRD CABLE	14.1	-8	29.6	5.6
2423 BURIED CABLE	14.1	0	27.8	5.1
2424 SUBMARINE CABLE	16.3	0	43.1	3.5
2431 AERIAL WIRE	28.0	-92	52.3	5.0
2441 CONDUIT SYSTEMS	36.0	0	21.4	2.2

The figures in Columns B, C, and D are percentages of gross book cost.

FEDERAL COMMUNICATIONS COMMISSION

Schedule of Annual Percentages of Depreciation for

GTE SOUTHWEST INCORPORATED - ARKANSAS

Effective January 1, 1993

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112	MOTOR VEHICLES	4.0	16	53.8	7.6
2115	GARAGE WORK EQUIPMENT	13.1	2	59.4	2.9
2116	TOOLS & OTHER WORK EQ	8.6	9	63.7	3.2
2121	BUILDINGS	23.0	1	23.6	3.3
2122	FURNITURE	15.9	2	43.2	3.4
2123	OFFICE SUPPORT EQUIP	6.3	7	88.7	0.7
2123	COMPANY OFFICIAL	6.5	7	42.9	7.7
2124	COMPUTERS	3.9	2	70.4	7.1
2212	DIGITAL ELECTRONIC SW	10.5	5	21.6	7.0
2215	AUTOMATIC SWITCHING	5.2	0	15.0	16.3
2231	RADIO SYSTEMS	16.5	5	29.1	4.0
2232	CIRCUIT EQUIPMENT	5.6	2	22.6	13.5
2351	PUBLIC TELEPHONE EQ	9.0	20	51.7	3.1
2362	TERMINAL EQUIPMENT	5.8	3	67.9	5.0
2411	POLES	14.3	-72	76.5	6.7
2421	AERIAL CABLE-METALLIC	12.1	-27	53.5	6.1
2421	AERIAL CABLE-NONMETAL	18.1	0	11.9	4.9
2422	UNDRGRND CBL-METALLIC	14.6	-12	32.7	5.4
2422	UNDRGRND CBL-NONMETAL	19.9	0	11.6	4.4
2423	BURIED CABLE-METALLIC	13.2	-10	38.2	5.4
2423	BURIED CABLE-NONMETAL	17.7	0	15.6	4.8
2426	INTRBLDG CBL-METALLIC	15.1	-31	56.1	5.0
2431	AERIAL WIRE	5.7	-231	220.9	19.3
2441	CONDUIT SYSTEMS	38.0	-5	14.8	2.4

The figures in Columns B, C, and D are percentages of gross book cost.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE SOUTHWEST INCORPORATED - NEW MEXICO

Effective January 1, 1993

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112	MOTOR VEHICLES	4.0	16	50.1	8.5
2115	GARAGE WORK EQUIPMENT	13.1	2	67.6	2.3
2116	TOOLS & OTHER WORK EQ	8.6	9	60.3	3.6
2121	BUILDINGS	23.0	3	26.9	3.0
2122	FURNITURE	15.9	2	39.2	3.7
2123	OFFICE SUPPORT EQUIP	---	7	93.0	5.0
2123	COMPANY OFFICIAL	6.5	7	50.7	6.5
2124	GEN PURPOSE COMPUTERS	3.9	2	75.3	5.8
2211	ANALOG SWITCHING	6.3	0	90.0	1.6
2212	DIGITAL ELECTRONIC SW	8.5	5	40.5	6.4
2220	OPERATOR SYSTEMS	13.6	0	3.6	7.1
2231	RADIO SYSTEMS	16.5	5	39.9	3.3
2232	CIRCUIT EQUIPMENT	5.4	-2	49.6	9.7
2351	PUBLIC TELEPHONE EQUIP	9.0	20	53.1	3.0
2362	TERMINAL EQUIPMENT	5.8	3	59.4	6.5
2411	POLES	17.7	-62	79.2	4.7
2421	AERIAL CABLE-METALLIC	12.3	-37	65.8	5.8
2421	AERIAL CABLE-NONMETAL	18.1	0	40.6	3.3
2422	UNDRGRND CBL-METALLIC	14.7	-19	41.2	5.3
2422	UNDRGRND CBL-NONMETAL	19.9	0	19.2	4.1
2423	BURIED CABLE-METALLIC	13.6	-10	33.8	5.6
2423	BURIED CABLE-NONMETAL	17.7	0	17.9	4.6
2426	INTRABLD CBL-METALLIC	12.8	-31	63.7	5.3
2431	AERIAL WIRE	---	-114	214.0	5.0
2441	CONDUIT SYSTEMS	36.0	-5	25.3	2.2

The figures in Columns B, C, and D are percentages of gross book cost.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE SOUTHWEST INCORPORATED - OKLAHOMA

Effective January 1, 1993

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112	MOTOR VEHICLES	4.0	16	62.0	5.5
2115	GARAGE WORK EQUIPMENT	13.1	2	56.4	3.2
2116	TOOLS & OTHER WORK EQ	8.6	9	58.6	3.8
2121	BUILDINGS	20.0	6	25.1	3.4
2122	FURNITURE	15.9	2	39.9	3.7
2123	OFFICE SUPPORT EQUIP	6.3	7	75.3	2.8
2123	COMPANY OFFICIAL	6.5	7	49.3	6.7
2124	GEN PURPOSE COMPUTERS	3.9	2	73.5	6.3
2212	DIGITAL ELECTRONIC SW	9.8	5	31.6	6.5
2215	AUTOMATIC SWITCHING	4.9	0	69.0	6.3
2231	RADIO SYSTEMS	16.5	5	24.9	4.2
2232	CIRCUIT EQUIPMENT	5.6	3	34.2	11.2
2351	PUBLIC TELEPHONE EQ	9.0	20	61.4	2.1
2362	TERMINAL EQUIPMENT	5.8	3	67.0	5.2
2411	POLES	14.4	-63	70.3	6.4
2421	AERIAL CABLE-METALLIC	12.6	-28	46.2	6.5
2421	AERIAL CABLE-NONMETAL	18.1	0	31.0	3.8
2422	UNDRGRND CBL-METALLIC	15.2	-7	23.4	5.5
2422	UNDRGRND CBL-NONMETAL	19.9	0	14.0	4.3
2423	BURIED CABLE-METALLIC	13.4	-10	40.5	5.2
2423	BURIED CABLE-NONMETAL	17.7	0	10.5	5.1
2424	SUBMARINE CBL-METALLIC	21.0	0	18.3	3.9
2426	INTRBLDG CBL-METALLIC	14.3	-31	37.0	6.6
2426	INTRBLDG CBL-NONMETAL	18.8	0	32.6	3.6
2431	AERIAL WIRE	3.4	-202	257.7	13.0
2441	CONDUIT SYSTEMS	41.0	-10	15.9	2.3

The figures in Columns B, C, and D are percentages of gross book cost.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
GTE SOUTHWEST INCORPORATED - TEXAS

Effective January 1, 1993

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112	MOTOR VEHICLES	4.0	16	46.1	9.5
2113	AIRCRAFT	3.8	50	27.6	5.9
2115	GARAGE WORK EQUIPMENT	13.1	2	36.4	4.7
2116	TOOLS & OTHER WORK EQ	8.6	9	50.6	4.7
2121	BUILDINGS	21.0	13	19.1	3.2
2122	FURNITURE	15.9	2	36.6	3.9
2123	OFFICE SUPPORT EQUIP	6.3	7	56.4	5.8
2123	COMPANY OFFICIAL	6.5	7	36.1	8.8
2124	GEN PURPOSE COMPUTERS	3.9	5	49.2	11.7
2211	ANALOG SWITCHING	3.5	0	0.9	28.3
2212	DIGITAL ELECTRONIC SW	10.4	5	27.7	6.5
2215	AUTOMATIC SWITCHING	4.6	0	82.8	3.7
2220	OPERATOR SYSTEMS	10.7	0	71.2	2.7
2231	RADIO SYSTEMS	16.5	5	28.6	4.0
2232	CIRCUIT EQUIPMENT	4.4	4	40.3	12.7
2351	PUBLIC TELEPHONE EQ	9.0	20	34.8	5.0
2362	TERMINAL EQUIPMENT	5.8	3	47.3	8.6
2411	POLES	14.4	-65	62.5	7.1
2421	AERIAL CABLE-METALLIC	12.3	-24	48.2	6.2
2421	AERIAL CABLE-NONMETAL	18.1	0	17.6	4.6
2422	UNDRGRND CBL-METALLIC	14.1	-7	22.5	6.0
2422	UNDRGRND CBL-NONMETAL	19.9	0	14.8	4.3
2423	BURIED CABLE-METALLIC	11.6	-10	35.6	6.4
2423	BURIED CABLE-NONMETAL	17.7	0	15.7	4.8
2424	SUBMARINE CBL-METALLIC	21.0	0	19.1	3.9
2424	SUBMARINE CBL-NONMETAL	23.0	0	-92.9	8.4
2426	INTRBLDG CBL-METALLIC	14.3	-31	44.1	6.1
2426	INTRBLDG CBL-NONMETAL	18.8	0	13.5	4.6
2431	AERIAL WIRE	---	-100	200.0	5.0
2441	CONDUIT SYSTEMS	38.0	-10	20.9	2.3

The figures in Columns B, C, and D are percentages of gross book cost.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY - MAINE

Effective January 1, 1993

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112	MOTOR VEHICLES	---	10	90.0	5.0
2114	SPEC PURP VEHICLES	5.9	8	47.1	7.6
2115	GARAGE WORK EQPT.	6.2	8	67.8	3.9
2116	OTHER WORK EQPT.	8.0	5	38.8	7.0
2121	BUILDINGS	23.0	5	32.3	2.7
2122	FURNITURE	11.7	6	24.3	6.0
2123	OFFICE SUPP. EQPT.	8.0	7	48.8	5.5
2123	OFFICIAL COMM. EQPT.	5.3	7	54.2	7.3
2124	GEN PURP COMPUTERS	3.5	1	55.4	12.5
2211	ANALOG ELEC.SWITCH	3.2	-1	27.6	22.9
2212	DIGITAL ELEC.SWITCH	10.4	1	20.4	7.6
2220	OPERATOR SYSTEMS	5.6	0	30.7	12.4
2231	RADIO SYSTEMS	4.3	-5	78.2	6.2
2232	CIRCUIT EQ. DDS	4.2	-4	51.2	12.6
2232	CIRCUIT EQ. DIGITAL	6.1	0	43.4	9.3
2232	CIRCUIT EQ. ANALOG	3.9	-4	37.0	17.2
2311	STATION APPARATUS	7.0	1	50.8	6.9
2351	PUB.TEL.TERM.EQPT.	4.4	1	69.5	6.7
2362	OTHER TERM.EQ.OTHER	4.7	-2	67.8	7.3
2411	POLE LINES	18.7	-49	41.3	5.8
2421	AERIAL CA EXCH MET	10.9	-22	49.1	6.7
2421	AERIAL CA EXCH NMET	20.0	-25	12.1	5.6
2421	AERIAL CA TOLL MET	2.4	-18	67.3	21.1
2421	AERIAL CA TOLL NMET	20.0	-20	18.9	5.1
2422	UNDRGRD CA EXCH MET	14.1	-28	45.2	5.9
2422	UNDRGRD CA EXCH NMET	16.7	-31	33.4	5.8
2422	UNDRGRD CA TOLL MET	2.2	-22	75.1	21.3
2422	UNDGRD CA TOLL NMET	19.8	-14	21.9	4.7
2423	BURIED CA EXCH MET	8.8	-6	33.8	8.2
2423	BURIED CA EXCH NMET	29.0	0	67.6	1.1
2423	BURIED CA TOLL MET	2.1	-3	63.5	18.8
2423	BURIED CA TOLL NMET	21.0	-2	8.7	4.4
2424	SUB CA EXCH MET	8.3	-5	64.3	4.9
2424	SUB CA EXCH NMET	30.0	0	0.0	3.3
2424	SUB CA TOLL MET	9.9	-5	64.0	4.1
2424	SUB CA TOLL NMET	26.0	-5	6.3	3.8
2426	INTRA NTWK CA MET	12.0	-26	40.2	7.2
2426	INTRA NTWK CA NMET	30.0	0	0.0	3.3
2431	AERIAL WIRE	4.7	-37	78.0	12.6
2441	CONDUIT	46.0	-5	20.2	1.8

The figures in Columns B, C, and D are percentages of gross book cost.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY - MASSACHUSETTS

Effective January 1, 1993

Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112 MOTOR VEHICLES	1.2	12	85.9	1.8
2114 SPEC PURP VEHICLES	5.6	2	84.1	2.5
2115 GARAGE WORK EQPT.	6.0	2	55.5	7.1
2116 OTHER WORK EQPT.	7.5	2	43.2	7.3
2121 BUILDINGS	24.0	10	27.8	2.6
2122 FURNITURE	9.0	5	39.0	6.2
2123 OFFICE SUPP. EQPT.	8.3	8	29.2	7.6
2123 OFFICIAL COMM. EQPT.	4.7	8	58.4	7.1
2124 GEN PURP COMPUTERS	2.8	1	80.7	6.5
2211 ANALOG ELEC.SWITCH	2.9	-1	59.2	14.4
2212 DIGITAL ELEC.SWITCH	10.4	0	28.9	6.8
2220 OPERATOR SYSTEMS	4.8	0	55.9	9.2
2231 RADIO SYSTEMS	3.2	0	76.4	7.4
2232 CIRCUIT EQ. DDS	3.4	-3	75.3	8.1
2232 CIRCUIT EQ. DIGITAL	5.9	0	44.8	9.4
2232 CIRCUIT EQ. ANALOG	3.4	-2	71.7	8.9
2311 STATION APPARATUS	---	1	99.0	5.0
2351 PUB.TEL.TERM.EQPT.	4.3	1	64.1	8.1
2362 OTHER TERM.EQ.OTHER	4.4	-5	67.9	8.4
2411 POLE LINES	22.0	-102	53.0	6.8
2421 AERIAL CA EXCH MET	12.2	-33	39.9	7.6
2421 AERIAL CA EXCH NMET	17.4	-25	12.8	6.4
2421 AERIAL CA TOLL MET	2.6	-24	67.4	21.8
2421 AERIAL CA TOLL NMET	20.0	-23	17.4	5.3
2422 UNDRGRD CA EXCH MET	13.7	-51	49.1	7.4
2422 UNDRGRD CA EXCH NMET	16.6	-40	21.2	7.2
2422 UNDRGRD CA TOLL MET	2.3	-33	73.4	25.9
2422 UNDRGRD CA TOLL NMET	19.4	-34	25.6	5.6
2423 BURIED CA EXCH MET	12.6	-10	37.5	5.8
2423 BURIED CA EXCH NMET	17.9	-10	16.6	5.2
2423 BURIED CA TOLL MET	2.5	-3	74.1	11.6
2423 BURIED CA TOLL NMET	21.0	-2	7.5	4.5
2424 SUB CA EXCH MET	8.4	-10	94.1	1.9
2424 SUB CA EXCH NMET	25.0	-5	7.0	3.9
2424 SUB CA TOLL MET	9.6	-10	75.1	3.6
2424 SUB CA TOLL NMET	24.0	-10	15.1	4.0
2426 INTRA NTWK CA MET	11.5	-26	26.2	8.7
2426 INTRA NTWK CA NMET	17.0	-25	8.4	6.9
2431 AERIAL WIRE	5.6	-86	108.7	13.8
2441 CONDUIT	44.0	-5	25.8	1.8

The figures in Columns B, C, and D are percentages of gross book cost.

FEDERAL COMMUNICATIONS COMMISSION

Schedule of Annual Percentages of Depreciation for

NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY - NEW HAMPSHIRE

Effective January 1, 1993

Rate Category Description	Average Remaining Life	Future Net Salvage	Reserve Level	Remaining Life Rate
	(years) A	(%) B	(%) C	(%) D=(100%-B-C)/A
2112 MOTOR VEHICLES	---	11	89.0	5.0
2114 SPEC PURP VEHICLES	6.9	4	35.9	8.7
2115 GARAGE WORK EQPT.	6.3	2	44.4	8.5
2116 OTHER WORK EQPT.	7.9	2	43.3	6.9
2121 BUILDINGS	24.0	9	28.3	2.6
2122 FURNITURE	11.6	7	26.6	5.7
2123 OFFICE SUPP. EQPT.	8.1	9	48.2	5.3
2123 OFFICIAL COMM. EQPT.	4.5	9	52.6	8.5
2124 GEN PURP COMPUTERS	---	5	71.9	5.0
2211 ANALOG ELEC.SWITCH	3.1	-1	56.0	14.5
2212 DIGITAL ELEC.SWITCH	10.2	1	28.5	6.9
2220 OPERATOR SYSTEMS	5.7	0	74.5	4.5
2231 RADIO SYSTEMS	4.5	-2	65.1	8.2
2232 CIRCUIT EQ. DDS	3.7	-4	64.4	10.7
2232 CIRCUIT EQ. DIGITAL	5.9	0	44.3	9.4
2232 CIRCUIT EQ. ANALOG	3.4	-3	64.4	11.4
2311 STATION APPARATUS	5.2	1	67.9	6.0
2351 PUB.TEL.TERM.EQPT.	4.5	1	64.6	7.6
2362 OTHER TERM.EQ. OTHER	4.3	-5	73.8	7.3
2411 POLE LINES	19.0	-45	35.8	5.7
2421 AERIAL CA EXCH MET	11.2	-24	45.0	7.1
2421 AERIAL CA EXCH NMET	20.0	-27	12.1	5.7
2421 AERIAL CA TOLL MET	2.5	-20	55.1	26.0
2421 AERIAL CA TOLL NMET	20.0	-17	18.9	4.9
2422 UNDRGRD CA EXCH MET	14.2	-17	40.1	5.4
2422 UNDRGRD CA EXCH NMET	16.9	-23	21.6	6.0
2422 UNDRGRD CA TOLL MET	2.4	-29	48.8	33.4
2422 UNDRGRD CA TOLL NMET	19.6	-17	24.5	4.7
2423 BURIED CA EXCH MET	10.7	-8	44.2	6.0
2423 BURIED CA EXCH NMET	19.1	-8	52.0	2.9
2423 BURIED CA TOLL MET	2.4	-5	71.1	14.1
2423 BURIED CA TOLL NMET	21.0	-3	7.3	4.6
2424 SUB CA EXCH MET	14.4	-10	57.0	3.7
2424 SUB CA EXCH NMET	24.0	-5	4.8	4.2
2424 SUB CA TOLL MET	14.8	-5	34.6	4.8
2424 SUB CA TOLL NMET	30.0	0	0.0	3.3
2426 INTRA NTWK CA MET	12.8	-28	24.9	8.1
2426 INTRA NTWK CA NMET	19.8	-27	12.1	5.8
2431 AERIAL WIRE	5.7	-69	99.1	12.3
2441 CONDUIT	42.0	-5	19.5	2.0

The figures in Columns B, C, and D are percentages of gross book cost.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY - RHODE ISLAND

Effective January 1, 1993

Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112 MOTOR VEHICLES	1.3	12	83.2	3.7
2115 GARAGE WORK EQPT.	6.2	5	49.0	7.4
2116 OTHER WORK EQPT.	7.7	0	38.1	8.0
2121 BUILDINGS	23.0	11	32.8	2.4
2122 FURNITURE	11.4	14	19.7	5.8
2123 OFFICE SUPP.EQPT.	8.1	10	46.3	5.4
2123 OFFICIAL COMM. EQPT.	4.6	10	59.6	6.6
2124 GEN PURP COMPUTERS	3.3	1	53.1	13.9
2211 ANALOG ELEC.SWITCH [a]	---	-1	63.3	---
2212 DIGITAL ELEC.SWITCH	9.9	1	33.0	6.7
2220 OPERATOR SYSTEMS	3.2	0	99.8	0.1
2231 RADIO SYSTEMS	2.8	-5	46.0	21.1
2232 CIRCUIT EQ. DDS	4.0	-3	69.9	8.3
2232 CIRCUIT EQ. DIGITAL	6.3	0	46.8	8.4
2232 CIRCUIT EQ. ANALOG	3.7	-3	62.1	11.1
2311 STATION APPARATUS	5.5	1	57.1	7.6
2351 PUB.TEL.TERM.EQPT.	4.3	1	66.9	7.5
2362 OTHER TERM.EQ.OTHER	4.7	-6	74.4	6.7
2411 POLE LINES	24.0	-92	46.9	6.0
2421 AERIAL CA EXCH MET	12.7	-38	48.3	7.1
2421 AERIAL CA EXCH NMET	17.7	-32	-5.6	7.8
2421 AERIAL CA TOLL MET	2.1	-22	52.5	33.1
2421 AERIAL CA TOLL NMET	20.0	-23	18.8	5.2
2422 UNDRGRD CA EXCH MET	13.8	-43	61.3	5.9
2422 UNDRGRD CA EXCH NMET	16.2	-30	11.9	7.3
2422 UNDRGRD CA TOLL MET	2.0	-23	40.0	41.5
2422 UNDRGRD CA TOLL NMET	20.0	-20	18.0	5.1
2423 BURIED CA EXCH MET	11.3	-5	45.2	5.3
2423 BURIED CA EXCH NMET	16.9	-5	42.0	3.7
2423 BURIED CA TOLL MET	2.1	-3	36.1	31.9
2423 BURIED CA TOLL NMET	30.0	0	0.0	3.3
2424 SUB CA EXCH MET	13.2	-5	92.1	1.0
2424 SUB CA EXCH NMET	21.0	-5	24.7	3.8
2424 SUB CA TOLL MET	7.3	-5	49.3	7.6
2424 SUB CA TOLL NMET	23.0	-5	15.5	3.9
2426 INTRA NTWK CA MET	15.1	-35	28.5	7.1
2426 INTRA NTWK CA NMET	30.0	0	0.0	3.3
2431 AERIAL WIRE	5.7	-30	100.2	5.2
2441 CONDUIT	36.0	-5	35.4	1.9

The figures in Columns B, C, and D are percentages of gross book cost.

[a] The net service value for the Analog Switching Account is to be amortized over a thirty-six month period ending December 31, 1995.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
NEW ENGLAND TELEPHONE AND TELEGRAPH COMPANY - VERMONT

Effective January 1, 1993

Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112 MOTOR VEHICLES	---	7	93.0	5.0
2114 SPEC PURP VEHICLES	8.1	0	51.3	6.0
2115 GARAGE WORK EQPT.	8.1	0	40.6	7.3
2116 OTHER WORK EQPT.	7.9	0	37.6	7.9
2121 BUILDINGS	20.0	9	34.6	2.8
2122 FURNITURE	9.7	9	35.8	5.7
2123 OFFICE SUPP. EQPT.	8.2	9	35.8	6.7
2123 OFFICIAL COMM. EQPT.	4.4	9	56.7	7.8
2124 GEN PURP COMPUTERS	4.2	1	33.6	15.6
2211 ANALOG ELEC.SWITCH	4.1	-1	27.5	17.9
2212 DIGITAL ELEC.SWITCH	10.6	0	26.8	6.9
2220 OPERATOR SYSTEMS	5.6	0	31.2	12.3
2231 RADIO SYSTEMS	1.5	-7	102.3	3.1
2232 CIRCUIT EQ. DDS	4.1	-4	59.7	10.8
2232 CIRCUIT EQ. DIGITAL	6.0	0	43.5	9.4
2232 CIRCUIT EQ. ANALOG	3.2	-3	40.6	19.5
2311 STATION APPARATUS	7.0	1	53.4	6.5
2351 PUB.TEL.TERM.EQPT.	4.3	1	67.9	7.2
2362 OTHER TERM.EQ.OTHER	4.6	-7	67.0	8.7
2411 POLE LINES	17.3	-60	48.9	6.4
2421 AERIAL CA EXCH MET	11.5	-36	46.7	7.8
2421 AERIAL CA EXCH NMET	22.0	-33	7.8	5.7
2421 AERIAL CA TOLL MET	2.4	-14	63.2	21.2
2421 AERIAL CA TOLL NMET	21.0	-17	14.8	4.9
2422 UNDRGRD CA EXCH MET	13.9	-38	42.1	6.9
2422 UNDRGRD CA EXCH NMET	16.0	-36	22.7	7.1
2422 UNDRGRD CA TOLL MET	2.2	-11	78.4	14.8
2422 UNDRGRD CA TOLL NMET	19.5	-34	26.7	5.5
2423 BURIED CA EXCH MET	13.3	-7	35.0	5.4
2423 BURIED CA EXCH NMET	30.0	0	0.0	3.3
2423 BURIED CA TOLL MET	2.2	-4	69.1	15.9
2423 BURIED CA TOLL NMET	18.9	-4	27.9	4.0
2424 SUB CA EXCH MET	8.4	-10	84.3	3.1
2424 SUB CA EXCH NMET	30.0	0	0.0	3.3
2424 SUB CA TOLL MET	4.5	-10	97.1	2.9
2424 SUB CA TOLL NMET	24.0	-10	14.2	4.0
2426 INTRA NTWK CA MET	16.2	-35	26.6	6.7
2426 INTRA NTWK CA NMET	30.0	0	0.0	3.3
2431 AERIAL WIRE	5.3	-73	92.7	15.2
2441 CONDUIT	42.0	-5	20.5	2.0

The figures in Columns B, C, and D are percentages of gross book cost.

FEDERAL COMMUNICATIONS COMMISSION

Schedule of Annual Percentages of Depreciation for

OHIO BELL TELEPHONE COMPANY

Effective January 1, 1993

Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112 MOTOR VEHICLES	4.1	14	37.3	11.9
2113 AIRCRAFT	3.5	14	54.9	8.9
2115 GARAGE WORK EQ	8.9	6	37.8	6.3
2116 OTHER WORK EQ	9.0	6	44.4	5.5
2121 BUILDINGS	27.0	8	24.1	2.5
2122 FURNITURE	13.2	5	35.2	4.5
2123 OFFICE SUPPORT EQ	7.7	2	22.6	9.8
2123 COMPANY COMM EQ	6.1	0	49.0	8.4
2124 GEN PURPOSE COMPUTERS	3.4	6	53.8	11.8
2211 ANALOG ELEC SWITCHING	2.6	0	48.8	19.7
2212 DIGITAL ELEC SWITCHIN	10.1	3	28.2	6.8
2220 OPERATOR SYSTEMS	6.0	-2	19.2	13.8
2231 RADIO SYSTEMS	4.0	1	64.2	8.7
2232 DIGITAL DATA SERVICES	3.7	2	33.5	17.4
2232 CIRCUIT OTHER	6.1	-2	46.8	9.0
2351 PUBLIC TEL TERM EQ	5.8	0	67.5	5.6
2362 OTHER TERM EQ	2.5	1	58.5	16.2
2411 POLES	15.1	-90	71.3	7.9
2421 AERIAL CABLE	10.3	-18	56.8	5.9
2422 UG CABLE-METALLIC	17.0	-9	46.8	3.7
2422 UG CABLE-NONMETALLIC	19.9	-17	15.1	5.1
2423 BUR CABLE-METALLIC	15.4	-10	36.0	4.8
2423 BUR CABLE-NONMETALLIC	21.0	-6	12.4	4.5
2424 SUBMARINE CABLE	5.5	-17	104.5	2.3
2426 INTRABUILDING CABLE	11.5	-19	52.2	5.8
2431 AERIAL WIRE	6.2	-72	152.3	3.2
2441 CONDUIT SYSTEMS	40.0	-18	31.5	2.2

The figures in Columns B, C, and D are percentages of gross book cost.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
SOUTHERN NEW ENGLAND TELEPHONE COMPANY

Effective January 1, 1993

Rate Category Description	Average Remaining Life	Future Net Salvage	Reserve Level	Remaining Life Rate
	(years)	(%)	(%)	(%)
	A	B	C	D=(100%-B-C)/A
2112 MOTOR VEHICLES	5.2	8	39.8	10.0
2115 GARAGE WORK EQUIPMENT	11.6	0	17.5	7.1
2116 OTHER WORK EQUIPMENT	5.9	2	51.0	8.0
2121 BUILDINGS	24.0	-5	30.7	3.1
2122 FURNITURE	8.0	1	58.9	5.0
2123 OFFICE SUPPORT EQUIP	7.3	0	54.9	6.2
2123 CO COMMUNICATIONS EQPT	5.5	3	55.1	7.6
2124 GENL PURPOSE COMPUTERS	3.7	1	54.2	12.1
2211 ANALOG ESS	4.1	0	49.1	12.4
2212 DIGITAL ESS	10.1	0	24.0	7.5
2220 OPERATOR SYSTEMS	3.1	0	76.0	7.7
2231 RADIO SYSTEMS	4.7	0	61.9	8.1
2232 DIGITAL DATA SYSTEMS	---	0	100.0	5.0
2232 DIGITAL CIRCUIT	6.3	0	31.5	10.9
2232 ANALOG CIRCUIT	4.4	-6	57.4	11.0
2351 PUBLIC TEL EQUIP	5.5	1	65.6	6.1
2362 OTHER TERMINAL EQUIP	4.5	0	49.1	11.3
2411 POLES	20.0	-73	51.8	6.1
2421 AERIAL CABLE	13.9	-20	40.0	5.8
2422 UG CA - METALLIC	14.0	-12	47.6	4.6
2422 UG CA - NONMETALLIC	24.0	-6	5.9	4.2
2423 BURIED CABLE	15.3	-9	34.6	4.9
2424 SUBMARINE CABLE	10.0	0	65.6	3.4
2426 INTRABLDG NTWK CABLE	13.5	-27	56.9	5.2
2441 CONDUIT SYSTEMS	37.0	-10	29.5	2.2

The figures in Columns B, C, and D are percentages of gross book cost.

Effective January 1, 1993

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112	MOTOR VEHICLES	3.6	11	50.2	10.8
2114	SPEC PURPOSE VEHICLE	13.4	12	10.4	5.8
2115	GARAGE WORK EQUIP	13.3	12	20.4	5.1
2116	OTHER WORK EQUIP	11.4	12	30.0	5.1
2121	BUILDINGS	25.0	-1	30.0	2.8
2122	FURNITURE	9.5	1	12.5	9.1
2123	OFFICE EQUIPMENT	5.7	0	11.1	15.6
2123	COMPANY COMM EQUIP	4.2	1	49.8	11.7
2124	GEN PURPOSE CMPTR	3.1	3	54.7	13.6
2211	ANALOG SW EQUIP	3.7	2	51.8	12.5
2212	DIGITAL SW EQUIP	10.5	3	24.9	6.9
2220	OPERATOR SYSTEMS	1.6	0	95.9	2.6
2231	RADIO SYSTEMS	8.4	-5	32.6	8.6
2232	CIRCUIT DDS	5.1	-4	41.3	12.3
2232	CIRCUIT DIGITAL	6.9	3	33.3	9.2
2232	CIRCUIT ANALOG	4.3	-4	48.9	12.8
2351	PUB TEL TERM EQUIP	2.9	5	89.8	1.8
2362	OTHER TERM EQUIP	4.3	1	41.9	13.3
2411	POLE LINES	11.1	-56	73.5	7.4
2421	AERIAL CABLE MET	10.4	-36	46.1	8.6
2421	AERIAL CABLE NON MET	16.2	-25	16.8	6.7
2422	UNDGRD CABLE MET	13.6	-8	36.2	5.3
2422	UNDGRD CABLE NON MET	21.0	-13	15.4	4.6
2423	BURIED CABLE MET	15.5	-7	35.0	4.6
2423	BURIED CABLE NON MET	22.0	-4	20.9	3.8
2424	SUB CABLE MET	20.0	-1	51.5	2.5
2424	SUB CABLE NON MET	30.0	0	0.0	3.3
2426	INTRA BLDG CA MET	11.7	-1	45.7	4.7
2426	INTRA BLDG NON MET	14.3	-14	17.3	6.8
2431	AERIAL WIRE	5.0	-123	68.2	31.0
2441	CONDUIT SYSTEMS	44.0	-5	20.9	1.9

The figures in Columns B, C, and D are percentages of gross book cost.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
U S WEST COMMUNICATIONS, INC. - MONTANA

Effective January 1, 1993

	Rate Category Description		Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112	MOTOR VEHICLES		4.2	10	51.6	9.1
2114	SPEC PURPOSE VEHICLE		11.9	13	24.9	5.2
2115	GARAGE WORK EQUIP		14.5	13	-58.6	10.0
2116	OTHER WORK EQUIP		12.7	13	-4.4	7.2
2121	BUILDINGS		19.5	-10	34.2	3.9
2122	FURNITURE		11.0	7	-1.8	8.6
2123	OFFICE EQUIPMENT		4.1	7	-1.3	23.0
2123	COMPANY COMM EQUIP		3.4	1	65.0	10.0
2124	GEN PURPOSE CMPTR		2.7	5	61.5	12.4
2211	ANALOG SW EQUIP		3.8	2	66.3	8.3
2212	DIGITAL SW EQUIP		10.2	3	23.8	7.2
2215	STEP BY STEP EQUIP	@	---	-5	75.1	---
2215	CROSSBAR SW EQUIP	*	---	-4	37.3	---
2220	OPERATOR SYSTEMS		8.0	0	0.0	12.5
2231	RADIO SYSTEMS		8.8	-3	40.1	7.1
2232	CIRCUIT DDS		4.1	15	32.0	12.9
2232	CIRCUIT DIGITAL		6.6	2	31.3	10.1
2232	CIRCUIT ANALOG		4.8	0	49.3	10.6
2351	PUB TEL TERM EQUIP		3.7	5	79.6	4.2
2362	OTHER TERM EQUIP		4.3	9	51.5	9.2
2411	POLE LINES		13.4	-64	87.7	5.7
2421	AERIAL CABLE MET		12.6	-42	42.8	7.9
2421	AERIAL CABLE NON MET		30.0	-25	0.4	4.2
2422	UNDGRD CABLE MET		14.3	-20	45.9	5.2
2422	UNDGRD CABLE NON MET		22.0	-15	7.9	4.9
2423	BURIED CABLE MET		15.7	-3	33.8	4.4
2423	BURIED CABLE NON MET		24.0	-6	7.4	4.1
2424	SUB CABLE MET		18.2	0	53.0	2.6
2424	SUB CABLE NON MET		30.0	0	0.0	3.3
2426	INTRA BLDG CA MET		13.1	-9	48.4	4.6
2426	INTRA BLDG NON MET		9.3	-10	14.2	10.3
2431	AERIAL WIRE		4.4	-100	122.1	17.7
2441	CONDUIT SYSTEMS		38.0	-15	29.1	2.3

The figures in Columns B, C, and D are percentages of gross book cost.

@ The net service value for the Step-by-Step Switching Account is to be amortized over a thirty-six month period ending December 31, 1995.

* The net service value for the Crossbar Account is to be amortized over a twenty-four month period ending December 31, 1994.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
U S WEST COMMUNICATIONS, INC. - OREGON

Effective January 1, 1993

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112	MOTOR VEHICLES	5.6	15	31.4	9.6
2114	SPEC PURPOSE VEHICLE	7.2	10	36.5	7.4
2115	GARAGE WORK EQUIP	7.4	10	60.5	4.0
2116	OTHER WORK EQUIP	8.7	10	42.9	5.4
2121	BUILDINGS	27.0	1	26.9	2.7
2122	FURNITURE	---	18	81.7	5.0
2123	OFFICE EQUIPMENT	8.2	9	-10.1	12.3
2123	COMPANY COMM EQUIP	3.9	0	24.8	19.3
2124	GEN PURPOSE CMPTR	2.9	9	67.8	8.0
2211	ANALOG SW EQUIP	4.3	2	39.0	13.7
2212	DIGITAL SW EQUIP	10.5	8	21.1	6.8
2220	OPERATOR SYSTEMS	6.6	5	39.0	8.5
2231	RADIO SYSTEMS	8.3	-5	39.7	7.9
2232	CIRCUIT DDS	5.3	0	3.0	18.3
2232	CIRCUIT DIGITAL	6.7	3	30.4	9.9
2232	CIRCUIT ANALOG	4.6	-4	43.2	13.2
2351	PUB TEL TERM EQUIP	6.4	6	67.9	4.1
2362	OTHER TERM EQUIP	5.6	0	25.3	13.3
2411	POLE LINES	12.7	-57	60.3	7.6
2421	AERIAL CABLE MET	11.8	-16	43.8	6.1
2421	AERIAL CABLE NON MET	16.6	-25	23.6	6.1
2422	UNDGRD CABLE MET	14.2	-6	40.4	4.6
2422	UNDGRD CABLE NON MET	21.0	-16	15.3	4.8
2423	BURIED CABLE MET	14.8	-9	35.9	4.9
2423	BURIED CABLE NON MET	22.0	-9	13.2	4.4
2424	SUB CABLE MET	11.4	-4	77.5	2.3
2424	SUB CABLE NON MET	14.5	-4	3.8	6.9
2426	INTRA BLDG CA MET	10.0	-18	63.5	5.5
2426	INTRA BLDG NON MET	17.3	-25	33.8	5.3
2431	AERIAL WIRE	6.0	-52	96.3	9.3
2441	CONDUIT SYSTEMS	37.0	-7	25.3	2.2

The figures in Columns B, C, and D are percentages of gross book cost.

FEDERAL COMMUNICATIONS COMMISSION
Schedule of Annual Percentages of Depreciation for
U S WEST COMMUNICATIONS, INC. - WASHINGTON

Effective January 1, 1993

	Rate Category Description	Average Remaining Life (years) A	Future Net Salvage (%) B	Reserve Level (%) C	Remaining Life Rate (%) D=(100%-B-C)/A
2112	MOTOR VEHICLES	5.3	15	33.6	9.7
2114	SPEC PURPOSE VEHICLE	6.5	7	73.4	3.0
2115	GARAGE WORK EQUIP	7.1	7	72.9	2.8
2116	OTHER WORK EQUIP	9.4	7	29.0	6.8
2121	BUILDINGS	33.0	4	18.1	2.4
2122	FURNITURE	11.3	22	-36.4	10.1
2123	OFFICE EQUIPMENT	8.1	6	3.2	11.2
2123	COMPANY COMM EQUIP	5.3	-1	18.4	15.6
2124	GEN PURPOSE CMPTR	3.1	10	29.9	19.4
2211	ANALOG SW EQUIP	4.7	2	43.6	11.6
2212	DIGITAL SW EQUIP	10.7	5	25.0	6.5
2220	OPERATOR SYSTEMS	7.1	5	21.7	10.3
2231	RADIO SYSTEMS	8.3	0	34.4	7.9
2232	CIRCUIT DDS	6.3	10	33.5	9.0
2232	CIRCUIT DIGITAL	6.8	0	34.1	9.7
2232	CIRCUIT ANALOG	5.3	0	48.6	9.7
2351	PUB TEL TERM EQUIP	7.7	5	44.0	6.6
2362	OTHER TERM EQUIP	5.9	0	48.3	8.8
2411	POLE LINES	13.2	-75	68.2	8.1
2421	AERIAL CABLE MET	12.4	-21	41.4	6.4
2421	AERIAL CABLE NON MET	14.7	-25	-6.6	9.0
2422	UNDGRD CABLE MET	15.0	-22	46.2	5.1
2422	UNDGRD CABLE NON MET	22.0	-22	16.6	4.8
2423	BURIED CABLE MET	16.4	-7	34.8	4.4
2423	BURIED CABLE NON MET	18.5	-7	23.4	4.5
2424	SUB CABLE MET	12.2	5	55.4	3.2
2424	SUB CABLE NON MET	22.0	-1	52.2	2.2
2426	INTRA BLDG CA MET	10.5	-20	58.2	5.9
2426	INTRA BLDG NON MET	16.9	-22	9.7	6.6
2431	AERIAL WIRE	3.9	-83	140.2	11.0
2441	CONDUIT SYSTEMS	39.0	-8	22.6	2.2

The figures in Columns B, C, and D are percentages of gross book cost.

Before the
Federal Communications Commission
Washington, D.C. 20554

PUBLIC NOTICE

Released: February 16, 1994

FEE DECISIONS OF THE MANAGING DIRECTOR AVAILABLE TO THE PUBLIC

The Managing Director is responsible for fee decisions in response to requests for waiver or deferral of fees as well as other pleadings associated with the fee collection process. On a monthly basis, a public notice is released and the entire text of these fee decisions is published in the FCC Record.

The decisions are placed in General Docket 86-285 and are available for public inspection. A copy of the decision is also placed in the appropriate docket, if one exists.

The following Managing Director fee decisions are released for public information:

ARDIS - Request for waiver of the rule set forth in section 1.1108 of the rules, 47 C.F.R. 1.1108(b) - **Granted** (January 10, 1994).

Camp, Cary D. - Request for refund of a hearing fee for a new FM station at Mansfield, Louisiana - **Granted** (December 29, 1993).

Central Television, Inc. - Request for refund of a hearing fee for a television station at Meridian, Mississippi - **Granted** (December 27, 1993).

Champion Broadcasting of Florida, Inc. - Request for refund of a filing fee for a station at Winter Garden, Florida - **Granted** (January 12, 1994).

Cole, Thomas R. - Requests for reconsideration and reinstatement for a new radio broadcast station at Ladson, South Carolina - **Denied** (January 10, 1994).

Greeley, Steven M. - Request for refund of a hearing fee for a new FM station at Lake Havasu City, Arizona - **Granted** (December 27, 1993).

Griffin, Patricia Diaz - Request for refund of a hearing fee for a new FM station at Lake Havasu City, Arizona - **Granted** (January 5, 1994).

KES Communications, Inc. - Request for refund of a hearing fee for a new FM station at Waimea, Hawaii - **Granted** (December 22, 1993).

Kirby, John W. - Request for refund of a hearing fee for a new FM station at Teutopolis, Illinois - **Granted** (December 30, 1993).

Morehead Broadcasting, Inc. - Request to refile an application for modification of a construction permit, or in the alternative obtain a refund of the application fee - **Denied** (January 5, 1994).

Pacific National Cellular - Request for damages - **Denied** (December 27, 1993).

Premier Broadcasting, Inc. - Request for refund of a filing fee for a station at Effingham, Illinois - **Granted** (January 5, 1994).

Russian River Vintage Broadcasting - Request for refund of a hearing fee for a new FM radio broadcast station at Sebastopol, California - **Denied** (January 10, 1994).

Thin Air Investments, Inc.(formerly Double W, Inc. and Don Timmerman Broadcasting, Inc.) - Request for refund of two hearing fees for two new FM stations at Cedar Falls, Iowa - **Granted** (December 27, 1993).

Tyner, Mitchell H. - Request for refund of a hearing fee for a new FM station at Mansfield, Louisiana - **Granted** (December 30, 1993).

Volunteers in Technical Assistance - Request for waiver of filing fees in connection with its application for authority to launch and operate and its application to construct an international non-profit, LEO satellite system - **Granted** (December 22, 1993).

NOTE: ANY QUESTIONS REGARDING THIS REPORT SHOULD BE DIRECTED TO THE PREPARER, CLAUDETTE PRIDE, CHIEF, FEE SECTION ON (202)632-0241.

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

JAN 1 - 1994

Ms. Kendall DuVay
ARDIS
300 Knightsbridge Parkway
Lincolnshire, Illinois 60069

Dear Ms. DuVay:

This is in response to your request, submitted in advance of filing, for waiver of the "one payment instrument" rule set forth in Section 1.1108 of the rules, 47 C.F.R. 1.1108(b).

You state that ARDIS must file a number of license renewal applications with the Commission. You also state, however, that your company's new computer system will not permit multiple payments to one payee on separate checks, but instead automatically combines all payments to a single payee on one check. You now seek waiver of the "one payment instrument" requirement.

Under the circumstances you describe, we will grant your request for waiver of the rule. Your waiver will extend through the date on which the Commission changes this rule, at which time we will be able to handle single payments for multiple applications being filed in the same lockbox. Your filing must be made to one lockbox, and you must notify Regina Dorsey, Chief, Billings and Collections Branch, at (202) 632-0241 in advance of your filing(s) or the applications will be returned by Mellon Bank.

Please do not hesitate to call my Deputy, Thomas M. Holleran, at (202) 632-5316 if you have any questions.

Sincerely,

Marilyn J. McDermett

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

DEC 29 1993

F. Joseph Brinig, Esq.
Brinig and Bernstein
1818 N Street, N.W.
Suite 200
Washington, D.C. 20036

Re: Cary D. Camp
New FM Station
Mansfield, Louisiana
Fee Control # 9209118170383002

Dear Mr. Brinig:

This is in response to your request for refund of the fee submitted in the above-referenced matter.

Your request is granted. We have reviewed the facts surrounding your filing and have concluded that a refund is warranted pursuant to Section 1.1111 of the Commission's rules. 47 C.F.R. §1.1111. The subsection checked below is specifically applicable to your request.

_____ No fee is required for the above referenced submission (§1.1111(a)(1)).

_____ An insufficient fee has been submitted with the application/filing (§1.1111(a)(2)).

_____ The applicant cannot fulfill the prescribed age requirement (§1.1111(a)(4)).

_____ The Commission has adopted a new rule that has nullified the application after its acceptance for filing (§1.1111(a)(4)).

_____ A new law or treaty has rendered useless a grant or other positive disposition of the application (§1.1111(a)(4)).

_____ The application was not timely filed in accordance with the filing window as established by the Commission (§1.1111(a)(6)).

_____ In the case of a broadcast applicant, the application was granted without being designated for hearing (§1.1111(b)(1)).

F. Joseph Brinig, Esq.

_____ In the case of a broadcast applicant, the application was dismissed prior to designation for hearing or in the order designating the case for hearing (§1.1111(b)(2)).

_____ In the case of a broadcast applicant, the application was dismissed for failure to file a Notice of Appearance (§1.1111(b)(2)).

_____ In the case of a broadcast applicant, the applicant was the only applicant in the proceeding to file a Notice of Appearance and the application was immediately grantable (§1.1111(b)(3)).

_____ In the case of a broadcast applicant, the applicant was the only applicant in the proceeding who filed a Notice of Appearance and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)).

__X__ In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for the dismissal of all but the above-referenced application, and the application was immediately grantable (§1.1111(b)(4)).

_____ In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for dismissal of all but the above-referenced application and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)(4)).

A check, made payable to the maker of the original check and drawn in the amount of $6,760, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

DEC 27 1993

Henry A. Solomon, Esq.
Haley, Bader & Potts
4350 North Fairfax Drive
Suite 900
Arlington, Virginia 22203-1633

Re: Central Television, Inc.
Television Station Applicant
Meridian, Mississippi
Fee Control # 9208068170378002

Dear Mr. Solomon:

This is in response to your request for refund of the fee submitted in the above-referenced matter.

Your request is granted. We have reviewed the facts surrounding your filing and have concluded that a refund is warranted pursuant to Section 1.1111 of the Commission's rules. 47 C.F.R. §1.1111. The subsection checked below is specifically applicable to your request.

_____ No fee is required for the above referenced submission (§1.1111(a)(1)).

_____ An insufficient fee has been submitted with the application/filing (§1.1111(a)(2)).

_____ The applicant cannot fulfill the prescribed age requirement (§1.1111(a)(4)).

_____ The Commission has adopted a new rule that has nullified the application after its acceptance for filing (§1.1111(a)(4)).

_____ A new law or treaty has rendered useless a grant or other positive disposition of the application (§1.1111(a)(4)).

_____ The application was not timely filed in accordance with the filing window as established by the Commission (§1.1111(a)(6)).

__X__ In the case of a broadcast applicant, the application was granted without being designated for hearing (§1.1111(b)(1)).

Henry A. Solomon, Esq.

_____ In the case of a broadcast applicant, the application was dismissed prior to designation for hearing or in the order designating the case for hearing (§1.1111(b)(2)).

_____ In the case of a broadcast applicant, the application was dismissed for failure to file a Notice of Appearance (§1.1111(b)(2)).

_____ In the case of a broadcast applicant, the applicant was the only applicant in the proceeding to file a Notice of Appearance and the application was immediately grantable (§1.1111(b)(3)).

_____ In the case of a broadcast applicant, the applicant was the only applicant in the proceeding who filed a Notice of Appearance and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)).

_____ In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for the dismissal of all but the above-referenced application, and the application was immediately grantable (§1.1111(b)(4)).

_____ In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for dismissal of all but the above-referenced application and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)(4)).

A check, made payable to the maker of the original check and drawn in the amount of $6,760, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

JAN 12 1994

OFFICE OF
MANAGING DIRECTOR

Robert B. Jacobi, Esquire
Cohn and Marks
1333 New Hampshire Avenue, N.W.
Suite 600
Washington, D.C. 20036-1573

Dear Mr. Jacobi:

This is in response to your request for refund of the fee submitted by Champion Broadcasting of Florida, Inc. (Champion), with its application to assign AM stations WXTO, Winter Garden, Florida and WXXU, Cocoa Beach, Florida to Rama Communications, Inc. (Rama).

The applications for the proposed assignments from Champion to Rama were filed with the requisite filing fees. However, both applications were returned because Rama's application was defective since it was filed on an obsolete form, and the fees submitted with both applications were retained, notwithstanding that Champion's application was filed in proper form and was otherwise acceptable. You request a refund of Champion's fee payment because its application was properly filed and returned only due to the deficiency in Rama's application. Finally, you note that Champion consolidated the fee payments for the applications in a single check.

Our review of matter discloses that a refund is warranted. Under the Commission's rules, separate fee payments are required with applications filed by both the assignor and the assignee of an AM facility. See 47 § 1.1104(2)(e)(i). Thus, we are satisfied that the Commission in adopting the Schedule of Fees recognized that parties to an assignment would be individually, rather than jointly, responsible for the completeness of their own application. Therefore, we conclude that a refund is due Champion since the deficiency resulting in the return of the applications was limited to Rama's application and was otherwise beyond Champion's control.

Accordingly, your request is granted. A check, payable to the maker of the original check and drawn in the amount of $565.00, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermett

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

January 10, 1994

OFFICE OF
MANAGING DIRECTOR

Richard J. Hayes, Jr., Esq.
13809 Black Meadow Road
Spotsylvania, Virginia 22553

Dear Mr. Hayes:

This letter responds to your petition for reconsideration, filed on behalf of Thomas R. Cole (Cole), seeking reinstatement of his application for a new FM radio broadcast station at Ladson, South Carolina. Your petition is opposed by Thomas B. Daniels, another applicant in this proceeding.

Cole's application was dismissed for failure to pay the hearing fee on time. The relevant hearing fee deadline for applicants in this proceeding was February 24, 1993, as established in Public Notice, Report No. NA-165 (December 21, 1992) (Public Notice). You state that on December 3, 1993 -- prior to release of the Public Notice -- the Federal Aviation Administration sent a letter to the Commission stating that Cole's tower proposal was determined to have substantial adverse effects on aeronautical operations such that it would warrant a determination of hazard to air navigation. You explain that Cole concluded that his application would not be acceptable to the Commission and consequently omitted to scan the Commission's "acceptability" releases, thereby missing the Public Notice accepting his application for filing. The Chief, FM Branch subsequently dismissed Cole's application for not paying the hearing fee. See Ltr. Ref. 1800B3-JRC, dated April 12, 1993.

In support of your petition, you contend that the Commission erred in releasing the Public Notice that included Cole's application because it had received actual notice from the FAA that his original application would not be "acceptable for filing" without amendment. You contend that "both procedural fairness and good business sense" dictates that Cole should not have been required to pay his hearing fee before he located a transmitter site. Petition at 6. You argue that his application should be reinstated due to the fact that the Commission never acknowledged the FAA's December 3, 1993 letter, nor took into account Cole's right to amend his application. Finally, in a footnote, you state that another applicant in the Ladson, South Carolina proceeding was dismissed for failure to pay the hearing fee and that it too is seeking reinstatement. You contend that the Commission's arbitrary dismissal of both applicants could result in the remaining applicant being awarded the construction permit by default, and that this is contrary to the public interest in having the various proposals tested by comparative hearing.

In opposition, Daniels contends that Cole misinterprets Commission policies regarding FAA clearances and the timely payment of hearing fees. Daniels states that FAA defects are not "acceptability defects" nor do they prevent the "acceptance" of applications. Daniels contends that the Commission has explained that, as a matter of policy, it would issue "Notices of Acceptance for Filing" prior to any technical review to expedite the processing of FM broadcast applications by triggering earlier the petition to deny pleading cycle. See Public Notice, 5 FCC Rcd 990 (1990). Daniels also contends the Commission has stated that it would begin requiring earlier submission of hearing fees, after the filing of the last mutually-exclusive application, to expedite settlement negotiations. See Proposal to Reform the Commission's Comparative Hearing Process, 6 FCC Rcd 157 (1991) (Comparative Hearing Reform). With respect to the latter policy, Daniels argues that both Comparative Hearing Reform decision and the Public Notice that accepted Cole's application for filing clearly stated that applicants were required to submit the hearing fee by the required date or their applications would be dismissed. Daniels contends that the prudent course for Cole was to pay its hearing fee in timely fashion and simultaneously perfect the technical aspects of his application.

We conclude that Cole's application properly was dismissed according to the rules for failure to pay his hearing fee. Section 73.3573 ("Processing FM broadcast station applications") states that a public notice announcing the acceptance of mutually exclusive applicants will "announce the date on which all mutually exclusive applicants will be required to pay the hearing fee. . ." 47 C.F.R. § 73.3573(g)(2)(i). Section 73.3573 contains no waivers or exceptions to allow an applicant to submit its hearing fee at a date other than that stipulated in the public notice, either for applicants that miss the public notice or for any other reason. The Public Notice listed Cole as an applicant and specified that the hearing fee "shall be paid no later than February 24, 1993 or the application will thereafter be dismissed." Public Notice. In addition, the Public Notice expressly stated that "[f]ailure to make the hearing fee payment in a timely manner will result in dismissal of the underlying pending application. 47 C.F.R. § 1.1107(b)." Id. (emphasis in original). Cole did not pay his hearing fee and, pursuant to the referenced rules, his application properly was dismissed.

Cole's argument that the Commission erred in accepting his application for filing is without merit. The Commission was not required to suspend the processing of Cole's application simply because the FAA had decided that his original proposal would not likely receive that agency's clearance. At any rate, the FAA's letter did not relieve Cole of his obligation to review the "acceptability" notices, regardless of whether or not he was at the same time attempting to locate a new transmitter site. As Daniels correctly states, the prudent course of action for Cole

was to perfect his proposal by locating a new tower site while at the same time preserving his status as an applicant by paying his hearing fee. The hearing fee was to be paid by a date certain, pursuant to a requirement that, contrary to Coles' argument, neither violates "procedural fairness" nor "good business sense." Had Cole paid his fee by the date specified in the Public Notice, then later found that he was unable to amend his proposal, he would have been entitled to a refund simply by not filing a notice of appearance. See 47 C.F.R. § 1.1111(b)(2).

Finally, we do not agree with Cole's contention that dismissal of both applicants in this proceeding because they did not pay their hearing fees, resulting in grant of the construction permit to the sole applicant that paid in a timely manner, is contrary to the public interest. In fact, the dismissal of the non-paying applicants will in this case promote the public interest by concluding in expeditious fashion the Ladson, South Carolina proceeding without any additional expenditure of resources. The Commission adopted the requirement for early payment of hearing fees in its proceedings to expedite the comparative hearing procedures for new broadcast facilities. See generally Comparative Hearing Decision, 6 FCC Rcd at 157. Allowing Cole and the other dismissed applicant back into the Ladson proceeding would contravene this and the fee-related policies explained above.

Accordingly, your requests for reconsideration, and reinstatement of the underlying application are denied.

Sincerely,

Marilyn J. McDermett

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

DEC 27 1993

Robert L. Olender, Esq.
Baraff, Koerner, Olender
& Hochberg, P.C.
5335 Wisconsin Avenue, N.W.
Suite 300
Washington, D.C. 20015-2003

Re: Steven M. Greeley
New FM Station
Lake Havasu City, Arizona
Fee Control # 9211028170398008

Dear Mr. Olender:

This is in response to your request for refund of the fee submitted in the above-referenced matter.

Your request is granted. We have reviewed the facts surrounding your filing and have concluded that a refund is warranted pursuant to Section 1.1111 of the Commission's rules. 47 C.F.R. §1.1111. The subsection checked below is specifically applicable to your request.

_____ No fee is required for the above referenced submission (§1.1111(a)(1)).

_____ An insufficient fee has been submitted with the application/filing (§1.1111(a)(2)).

_____ The applicant cannot fulfill the prescribed age requirement (§1.1111(a)(4)).

_____ The Commission has adopted a new rule that has nullified the application after its acceptance for filing (§1.1111(a)(4)).

_____ A new law or treaty has rendered useless a grant or other positive disposition of the application (§1.1111(a)(4)).

_____ The application was not timely filed in accordance with the filing window as established by the Commission (§1.1111(a)(6)).

__X__ In the case of a broadcast applicant, the application was granted without being designated for hearing (§1.1111(b)(1)).

Robert L. Olender, Esq.

_____ In the case of a broadcast applicant, the application was dismissed prior to designation for hearing or in the order designating the case for hearing (§1.1111(b)(2)).

_____ In the case of a broadcast applicant, the application was dismissed for failure to file a Notice of Appearance (§1.1111(b)(2)).

_____ In the case of a broadcast applicant, the applicant was the only applicant in the proceeding to file a Notice of Appearance and the application was immediately grantable (§1.1111(b)(3)).

_____ In the case of a broadcast applicant, the applicant was the only applicant in the proceeding who filed a Notice of Appearance and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)).

_____ In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for the dismissal of all but the above-referenced application, and the application was immediately grantable (§1.1111(b)(4)).

_____ In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for dismissal of all but the above-referenced application and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)(4)).

A check, made payable to the maker of the original check and drawn in the amount of $6,760, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

SEP 6 1994

Ms. Patricia Diaz Griffin
923 Swan Drive
Bullhead City, Arizona 86442

Re: New FM Station
Lake Havasu City, Arizona
Fee Control # 9211028170398001

Dear Ms. Griffin:

This is in response to your request for refund of the fee submitted in the above-referenced matter.

Your request is granted. We have reviewed the facts surrounding your filing and have concluded that a refund is warranted pursuant to Section 1.1111 of the Commission's rules. 47 C.F.R. §1.1111. The subsection checked below is specifically applicable to your request.

_____ No fee is required for the above referenced submission (§1.1111(a)(1)).

_____ An insufficient fee has been submitted with the application/filing (§1.1111(a)(2)).

_____ The applicant cannot fulfill the prescribed age requirement (§1.1111(a)(4)).

_____ The Commission has adopted a new rule that has nullified the application after its acceptance for filing (§1.1111(a)(4)).

_____ A new law or treaty has rendered useless a grant or other positive disposition of the application (§1.1111(a)(4)).

_____ The application was not timely filed in accordance with the filing window as established by the Commission (§1.1111(a)(6)).

_____ In the case of a broadcast applicant, the application was granted without being designated for hearing (§1.1111(b)(1)).

Ms. Patricia Diaz Griffin

__X__ In the case of a broadcast applicant, the application was dismissed prior to designation for hearing or in the order designating the case for hearing (§1.1111(b)(2)).

_____ In the case of a broadcast applicant, the application was dismissed for failure to file a Notice of Appearance (§1.1111(b)(2)).

_____ In the case of a broadcast applicant, the applicant was the only applicant in the proceeding to file a Notice of Appearance and the application was immediately grantable (§1.1111(b)(3)).

_____ In the case of a broadcast applicant, the applicant was the only applicant in the proceeding who filed a Notice of Appearance and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)).

_____ In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for the dismissal of all but the above-referenced application, and the application was immediately grantable (§1.1111(b)(4)).

_____ In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for dismissal of all but the above-referenced application and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)(4)).

A check, made payable to the maker of the original check and drawn in the amount of $6,760, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermett

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

DEC 2 2 1993

Ms. Karen E. Slade
1148 Citrus Street
Los Angeles, California 90019

Re: KES Communications, Inc.
New FM Station
Waimea, Hawaii
Fee Control # 9205148170361001

Dear Ms. Slade:

This is in response to your request for refund of the fee submitted in the above-referenced matter.

Your request is granted. We have reviewed the facts surrounding your filing and have concluded that a refund is warranted pursuant to Section 1.1111 of the Commission's rules. 47 C.F.R. §1.1111. The subsection checked below is specifically applicable to your request.

_____ *No fee is required for the above referenced submission (§1.1111(a)(1)).*

_____ *An insufficient fee has been submitted with the application/filing (§1.1111(a)(2)).*

_____ *The applicant cannot fulfill the prescribed age requirement (§1.1111(a)(4)).*

_____ *The Commission has adopted a new rule that has nullified the application after its acceptance for filing (§1.1111(a)(4)).*

_____ *A new law or treaty has rendered useless a grant or other positive disposition of the application (§1.1111(a)(4)).*

_____ *The application was not timely filed in accordance with the filing window as established by the Commission (§1.1111(a)(6)).*

__X__ *In the case of a broadcast applicant, the application was granted without being designated for hearing (§1.1111(b)(1)).*

Ms. Karen E. Slade

_____ *In the case of a broadcast applicant, the application was dismissed prior to designation for hearing or in the order designating the case for hearing (§1.1111(b)(2)).*

_____ *In the case of a broadcast applicant, the application was dismissed for failure to file a Notice of Appearance (§1.1111(b)(2)).*

_____ *In the case of a broadcast applicant, the applicant was the only applicant in the proceeding to file a Notice of Appearance and the application was immediately grantable (§1.1111(b)(3)).*

_____ *In the case of a broadcast applicant, the applicant was the only applicant in the proceeding who filed a Notice of Appearance and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)).*

_____ *In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for the dismissal of all but a single application, and that application was immediately grantable (§1.1111(b)(4)).*

_____ *In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for dismissal of all but a single application and that application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)(4)).*

A check, made payable to the maker of the original check and drawn in the amount of $6,760, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

Oct 4 1993

David M. Silverman, Esq.
Cole, Raywid & Braverman
1919 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-3458

Re: John W. Kirby
Teutopolis, Illinois
Fee Control # 9305178170013001

Dear Mr. Silverman:

This is in response to your request for refund of the fee submitted in the above-referenced matter.

Your request is granted. We have reviewed the facts surrounding your filing and have concluded that a refund is warranted pursuant to Section 1.1111 of the Commission's rules. 47 C.F.R. §1.1111. The subsection checked below is specifically applicable to your request.

_____ No fee is required for the above referenced submission (§1.1111(a)(1)).

_____ An insufficient fee has been submitted with the application/filing (§1.1111(a)(2)).

_____ The applicant cannot fulfill the prescribed age requirement (§1.1111(a)(4)).

_____ The Commission has adopted a new rule that has nullified the application after its acceptance for filing (§1.1111(a)(4)).

_____ A new law or treaty has rendered useless a grant or other positive disposition of the application (§1.1111(a)(4)).

_____ The application was not timely filed in accordance with the filing window as established by the Commission (§1.1111(a)(6)).

_____ In the case of a broadcast applicant, the application was granted without being designated for hearing (§1.1111(b)(1)).

David M. Silverman, Esq.

_____ In the case of a broadcast applicant, the application was dismissed prior to designation for hearing or in the order designating the case for hearing (§1.1111(b)(2)).

_____ In the case of a broadcast applicant, the application was dismissed for failure to file a Notice of Appearance (§1.1111(b)(2)).

_____ In the case of a broadcast applicant, the applicant was the only applicant in the proceeding to file a Notice of Appearance and the application was immediately grantable (§1.1111(b)(3)).

_____ In the case of a broadcast applicant, the applicant was the only applicant in the proceeding who filed a Notice of Appearance and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)).

_____ In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for the dismissal of all but the above-referenced application, and the application was immediately grantable (§1.1111(b)(4)).

__X__ In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for dismissal of all but the above-referenced application and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)(4)).

A check, made payable to the maker of the original check and drawn in the amount of $6,760, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

JAN 05

Mr. Mervill Lawson
Chief Engineer
Morehead Broadcasting, Inc.
POB 940, 113 East 1st Street
Morehead, Kentucky 40351

Dear Mr. Lawson:

This is in response to your letter requesting to refile Morehead Broadcasting, Inc.'s (Morehead) application for modification of a construction permit covering station WMOR, or in the alternative, to obtain a refund of your application fee.

You state that Morehead's application was returned because it contained erroneous entries. In this regard, your signature, rather than the signature of an official authorized by the Commission's rules to sign an application on behalf of Morehead, was affixed to the application. See 47 C.F.R. § 73.3513. Also, you state that you were advised by a letter from a staff member that WMOR might be entitled to a refund of its application fee. Upon further inquiry, you were informed orally by the staff that a formal determination would be required before a refund could be issued.

Our review of this matter discloses that the Mass Media Bureau has informed you that a new application for modification of WMOR's facilities must be filed in view of the deficiencies contained in WMOR's initial application. Moreover, once an application has cleared the fee review process, the fee is not refundable except in a few limited instances. See 47 C.F.R. § 1.1111. The dismissal of your application for failure to include the proper signature does not fall within the authorized exceptions that the Commission has enumerated in section 1.1111. Therefore, we can find no justification within the Commission's rules to reinstate WMOR's application or to provide a refund.

Accordingly, your request is denied.

Sincerely,

Marilyn J. McDermett

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

DEC 27 1993

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Sean P. Beatty, Esquire
Law Offices of Richard S. Myers
1090 Vermont Avenue, N.W.
Suite 800
Washington, D.C. 20005

Dear Mr. Myers:

This is in response to your claim, filed on behalf of Pacific National Cellular (Pacific), seeking damages in the amount of $221,384.60. This claim arises out of the alleged negligence of the Federal Communications Commission in connection with an application for a cellular telephone construction permit. The damages are allegedly based upon the Commission's twice dismissing Pacific National Cellular's application before reinstating the application upon reconsideration.

Our review indicates that, on August 7, 1990, Pacific filed an application for a construction permit to establish a cellular radio system for RSA No. 402 Illinois 9-Clay, File No. 10310-CL-P-402-A-88. The Common Carrier Bureau dismissed the application because Pacific had failed to demonstrate that it had either a firm financial commitment or available financial resources to construct and operate its proposed cellular system for one year, as required by section 22.917(c)(5) of the Commission's rules. See letter to Richard S. Myers, Esquire from Gregory J. Vogt, Chief, Mobile Services Division, dated June 28, 1990. Subsequently, the Commission affirmed Pacific's dismissal. See Butte Cellular Group, 6 FCC Rcd 6745 (1991). On reconsideration, however, Pacific's application was reinstated because section 22.917(c)(5) had not been adopted in accordance with the Paperwork Reduction Act. See Kent E. Foster, 7 FCC Rcd 7971, released December 8, 1992. Subsequently, the Commission granted Pacific's application. See Public Notice, Mimeo No. 33318, released May 27, 1993.

We have carefully considered your claim under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 1402(b), 2671-2680. Based upon this review, we have concluded that you have not presented a claim upon which any relief may be granted under the Federal Tort Claims Act. Accordingly, your claim is denied. See 28 U.S.C. § 2680(a); United States v. Varig Airlines, 467 U.S. 797, 813-14, 820 (1984).

Sean P. Beatty, Esquire

Pursuant to 28 C.F.R. § 14.9(a), we are required to notify you that, if you are dissatisfied with this determination, you may file a suit in the appropriate United States District Court not later than six (6) months after the date of the mailing of this notification. See 28 U.S.C. § 2401(b).

Sincerely,

Andrew S. Fishel
Managing Director

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

JAN 05 1994

T. David Ring
Premier Broadcasting Inc.
P.O. Box 988
Effingham, Illinois 62401-0988

Dear Mr. Ring:

This will respond to your request for refund of a filing fee submitted in connection with the transfer application of Premier Broadcasting Inc. ("Premier").

You state that Premier resubmitted its transfer application, with the appropriate form and the appropriate fee, because the first application utilized an obsolete form and was therefore returned. Thus, Premier had submitted two applications with two separate fee payments, but only one application was processed. Therefore, you request a refund of the second fee payment. It would appear that, under the circumstances, refund of the second fee payment is warranted. See 47 C.F.R. §§1.1107(d); 1.1111(a)(1).

Accordingly, your request is granted. A check, made payable to the maker of the original check and drawn in the amount of $565.00, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermett

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

January 10, 1994

OFFICE OF
MANAGING DIRECTOR

Benjamin Perez, Esq.
Abacus Communications Company
1801 Columbia Road, N.W.
Suite 101
Washington, D.C. 20009-2031

Dear Mr. Perez:

This is in response to your hearing fee refund submitted on behalf of Russian River Vintage Broadcasting (Russian), applicant for a new FM radio broadcast station at Sebastopol, California.

You state that Russian tendered its hearing fee on July 20, 1990 (File No. BPH-880519NL). You also state that Russian filed a Notice of Appearance, but that its application later was dismissed and not designated for hearing. You now request refund of Russian's hearing fee on the grounds that it did not participate in the hearing as expected.

Russian's hearing fee may not be refunded. Russian filed a Notice of Appearance and paid the fee, signifying its intention to participate in the comparative hearing. Although you claim that Russian did not participate in the hearing, you do not explain how or why Russian did not participate after filing its Appearance and paying its fee, nor do you relate when Russian dismissed its application. The rules in place at the time Russian filed its Appearance allowed for refunds to applicants that participated in universal settlement of a proceeding or to a sole surviving applicant that was immediately grantable without hearing. See 47 C.F.R. §§ 1.1111(c)(1) & (2), redesignated and amended as §§ 1.1111(b)(3) & (4). Neither of these circumstances attend here, nor do any of the current refund rules apply. See generally 47 C.F.R. § 1.1111(b).

Accordingly, your request for refund of hearing fee is denied.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

DEC 27 1993

Kathryn R. Schmeltzer, Esq.
Fisher, Wayland, Cooper
and Leader
1255 23rd Street, N.W.
Suite 800
Washington, D.C. 20037-1170

Re: Thin Air Investments, Inc. (formerly
Double W, Inc. and Don Timmerman
Broadcasting, Inc.), Cedar Falls, Iowa
Fee Control# 9211028170397004
Fee Control# 9210228170391001

Dear Ms. Schmeltzer:

This is in response to your request for refund of the fee submitted in the above-referenced matter.

Your request is granted. We have reviewed the facts surrounding your filing and have concluded that a refund is warranted pursuant to Section 1.1111 of the Commission's rules. 47 C.F.R. §1.1111. The subsection checked below is specifically applicable to your request.

_____ No fee is required for the above referenced submission (§1.1111(a)(1)).

_____ An insufficient fee has been submitted with the application/filing (§1.1111(a)(2)).

_____ The applicant cannot fulfill the prescribed age requirement (§1.1111(a)(4)).

_____. The Commission has adopted a new rule that has nullified the application after its acceptance for filing (§1.1111(a)(4)).

_____ A new law or treaty has rendered useless a grant or other positive disposition of the application (§1.1111(a)(4)).

_____ The application was not timely filed in accordance with the filing window as established by the Commission (§1.1111(a)(6)).

_____ In the case of a broadcast applicant, the application was granted without being designated for hearing (§1.1111(b)(1)).

Kathryn R. Schmeltzer, Esq.

_____ In the case of a broadcast applicant, the application was dismissed prior to designation for hearing or in the order designating the case for hearing (§1.1111(b)(2)).

_____ In the case of a broadcast applicant, the application was dismissed for failure to file a Notice of Appearance (§1.1111(b)(2)).

_____ In the case of a broadcast applicant, the applicant was the only applicant in the proceeding to file a Notice of Appearance and the application was immediately grantable (§1.1111(b)(3)).

_____ In the case of a broadcast applicant, the applicant was the only applicant in the proceeding who filed a Notice of Appearance and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)).

__X__ In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for the dismissal of all but the above-referenced application, and the application was immediately grantable (§1.1111(b)(4)).

_____ In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for dismissal of all but the above-referenced application and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)(4)).

Two checks, made payable to the law firm of Fisher, Wayland, Cooper and Leader, on behalf of the original applicants, Double W, Inc. and Don Timmerman Broadcasting, Inc., each drawn in the amount of $6,760, respectively, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

Thomas Gillian for

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

OFFICE OF
MANAGING DIRECTOR

DEC 30 1993

Mitchell H. Tyner, Esq.
824 Gravier Street
New Orleans, Louisiana 70112

Re: New FM Station
Mansfield, Louisiana
Fee Control # 9209148170384002

Dear Mr. Tyner:

This is in response to your request for refund of the fee submitted in the above-referenced matter.

Your request is granted. We have reviewed the facts surrounding your filing and have concluded that a refund is warranted pursuant to Section 1.1111 of the Commission's rules. 47 C.F.R. §1.1111. The subsection checked below is specifically applicable to your request.

_____ No fee is required for the above referenced submission (§1.1111(a)(1)).

_____ An insufficient fee has been submitted with the application/filing (§1.1111(a)(2)).

_____ The applicant cannot fulfill the prescribed age requirement (§1.1111(a)(4)).

_____ The Commission has adopted a new rule that has nullified the application after its acceptance for filing (§1.1111(a)(4)).

_____ A new law or treaty has rendered useless a grant or other positive disposition of the application (§1.1111(a)(4)).

_____ The application was not timely filed in accordance with the filing window as established by the Commission (§1.1111(a)(6)).

_____ In the case of a broadcast applicant, the application was granted without being designated for hearing (§1.1111(b)(1)).

Mitchell H. Tyner, Esq.

__X__ In the case of a broadcast applicant, the application was dismissed prior to designation for hearing or in the order designating the case for hearing (§1.1111(b)(2)).

_____ In the case of a broadcast applicant, the application was dismissed for failure to file a Notice of Appearance (§1.1111(b)(2)).

_____ In the case of a broadcast applicant, the applicant was the only applicant in the proceeding to file a Notice of Appearance and the application was immediately grantable (§1.1111(b)(3)).

_____ In the case of a broadcast applicant, the applicant was the only applicant in the proceeding who filed a Notice of Appearance and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)).

_____ In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for the dismissal of all but the above-referenced application, and the application was immediately grantable (§1.1111(b)(4)).

_____ In the case of a broadcast applicant, a settlement agreement filed with the presiding judge by the Notice of Appearance deadline provided for dismissal of all but the above-referenced application and the application was immediately grantable upon deletion of a matter(s) specified in the designation order and requiring resolution (§1.1111(b)(4)).

A check, made payable to the maker of the original check and drawn in the amount of $6,760, will be sent to you at the earliest practicable time. If you have any questions concerning this refund, please contact the Chief, Fee Section at (202) 632-0241.

Sincerely,

Marilyn J. McDermett
Associate Managing Director
for Operations

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

December 22, 1993

OFFICE OF
MANAGING DIRECTOR

Henry R. Norman, Esquire
President
Volunteers In Technical
Assistance, Inc.
1815 North Lynn Street
Suite 200
Arlington, Virginia 22209-8438

Dear Mr. Norman:

This is in response to the request for waiver, filed by Volunteers in Technical Assistance (VITA), of the filing fees required with its application for authority to launch and operate and its application to construct an international non-profit, low earth orbit satellite (LEO) system.

VITA is a tax-exempt organization which plans to construct and operate three space craft in the fixed-satellite service for the provision of international education, health, environmental, disaster relief, and technical assistance communications.

VITA has requested the waivers because it will provide its services on a non-profit basis. Previously, the Commission declined to grant VITA's waiver requests because it believed that grant of the requests were beyond its authority since "Congress did not establish a general waiver for non-profit entities, except for non-profit applicants in the special emergency radio and public safety radio services." See letter to Henry R. Norman, Esquire from Marilyn J. McDermett, Associate Managing Director for Operations, dated November 19, 1991; see also letter to Henry R. Norman, Esquire from Andrew S. Fishel, Managing Director, dated March 11, 1992.

However, Congress recently had occasion to clarify that requests for fee waivers by "non-profit entities which qualify for tax exempt status, and which seek to use the new cost-efficient technology of ultra-light, non-geostationary satellite systems to advance a public interest" should be considered within the scope of the Commission's waiver authority. See Conference Report on H.R. 2519 (H.R. Rep. No. 103-293), 103d Cong., 1st Sess. (1993).

As a consequence, we are now satisfied that VITA's request for waiver is properly before the Commission for consideration. Therefore, based on the purposes for which VITA will operate its system, its non-profit status and its representation that "its services will be provided on a strictly non-profit basis for the benefit of recipients in developing countries," we find that grant

of VITA's requests are in the public interest. See Request for Waiver of Filing Fees, p. 3, filed September 21, 1990.

Accordingly, VITA's requests for waiver are granted.

Sincerely,

Andrew S. Fishel
Managing Director

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DA 93 - 1524

In the Matter of	)
	)
Petitions for Waiver of	)
Transport Rate Structure and	)
Pricing Requirements	)

ORDER

Adopted: December 16, 1993; Released: December 17, 1993

By the Acting Chief, Common Carrier Bureau:

1. This Order addresses requests for waivers filed by twenty-one parties in connection with the interim transport rate restructure tariffs.[1] The waiver requests fall into five categories: (1) petitions seeking waiver of the requirement that carriers use historical facilities demand and historical tandem use, without taking into account anticipated network reconfiguration by interexchange carriers, in calculating the tandem and interconnection charge rates; (2) petitions seeking waiver of the rules requiring non-premium charges for local transport rates; (3) petitions regarding billing for host/remote switching configurations; (4) petitions filed pursuant to our Public Notice of August 20, 1993, inviting non-Tier 1 local exchange carriers (LECs) to file waiver requests regarding implementation of initial restructured transport tariffs; and (5) SNET's petition for waiver of the requirement that LECs must use September 1, 1992 special access rates as the basis of their restructured transport rates in order for their transport rates to be presumed reasonable.

2. In this Order, we deny those waiver requests that seek approval to use projected, post-reconfiguration demand to calculate the tandem charge and the interconnection charge. We grant all LECs a waiver of Section 69.113 of the Commission's rules[2] to allow them to tariff non-premium charges for only the interconnection charge rate element. We grant the temporary waivers requested by Bell Atlantic, GTE, Nevada Bell and Pacific Bell, allowing them to postpone implementation of the Commission's transport rules for facilities between host and remote switches. We deny Ameritech's request for a permanent partial waiver of the host-remote requirements, but grant its request for a six-month period. We grant the waiver requests filed by non-Tier 1 LECs in response to the August 20 Public Notice. Finally, we grant SNET's

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[1] Transport Rate Structure and Pricing, 7 FCC Rcd 7006 (1992)(*Transport Order*); *recon.*, 8 FCC Rcd 5370 (1993)(*First Reconsideration Order*); *further recon.*, 8 FCC Rcd 6233 (1993)(*Second Reconsideration Order*); *further recon. pending*, (collectively, *Transport Orders*). A list of parties requesting waivers and abbreviations used herein is attached to this order as Appendix A.

[2] 47 C.F.R. § 69.113.

petition to allow it to use its current special access rate structure in setting its initial transport rates.

I. HISTORICAL FACILITY DEMAND WAIVERS

3. In the *Transport Order*, the Commission initially permitted LECs to set the interconnection charge and tandem charge based on projections of how interexchange carriers might reconfigure their switched access network arrangements in response to the new transport rate structure.[3] On reconsideration, the Commission determined that the use of historical facility demand would improve efficiency incentives, eliminate difficulties associated with evaluating projected facility demand projections and counter incentives to project reconfigurations to maximize interconnection charge levels.[4] In order to keep the transport rate structure revenue neutral, the Commission stated that it would permit a mid-course adjustment to the interconnection charge if a LEC could demonstrate that: (i) actual demand for interstate transport facilities is significantly less than the historical demand used to set the interconnection charge due to interexchange carrier (IXC) network reconfigurations triggered by the transport rate restructure; and (ii) the LEC has not been able to put its facilities to alternative uses.[5] The Commission also delegated authority to the Chief, Common Carrier Bureau to require an adjustment to the tandem charge if the actual number of minutes of tandem use is significantly different from the historical number of minutes, and if this results in a substantial difference in the level of the charge.[6]

A. Petitions

4. Centel, Rochester, and United each filed petitions for waiver of the requirement imposed by the *First Reconsideration Order*[7] that LECs use historical facility demand, without taking into account anticipated network reconfiguration by interexchange carriers, in computing the rates for the interconnection and tandem charges.[8] Rochester,

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[3] *Transport Order*, 7 FCC Rcd at 7037-38. LECs were permitted, in that order, to set the interconnection charge based on projected demand after interexchange carrier reconfigurations occurred; however, the LECs were also required to take into account other demand for the same facilities in order to prevent double recovery. Because of the difficulty in projecting interexchange carrier reconfigurations, that order established a true-up procedure to compare the projected demand used to calculate the interconnection charge with the actual demand during the first six months after the implementation of the interim transport rules.

[4] *First Reconsideration Order*, 8 FCC Rcd at 5379.

[5] *Id.*

[6] *Id.*, at 5379 n. 78.

[7] *Id.*, at 5379.

[8] Facility demand factors into the calculation of the interconnection and tandem charges as follows: The *Transport Order* directs LECs to calculate the interconnection charge by: (1) computing the revenue they will receive from facilities-based transport charges, by multiplying the total amount of historical facilities usage by the rates from the facilities-based transport elements; (2) subtracting this amount from

Centel and United seek waiver of the requirements of the *First Reconsideration Order* so that they may develop tandem charge and transport interconnection rates in accordance with the methodology specified in the original *Transport Order*,[9] which allowed the carriers to use demand forecasts -- after interexchange carriers reconfigure their use of LEC access facilities -- in making these calculations.[10]

5. Centel, Rochester and United each allege that the use of historical facility demand works a disproportionate hardship upon them because they have relatively little or no demand for direct-trunked transport.[11] Centel, Rochester and United claim that, under the restructure, there will be significant network reconfiguration by interexchange carriers to take advantage of the direct-trunked transport rates, and that this reconfiguration will result in substantially lower transport revenues.[12] These carriers assert that, unless they are permitted to use reconfigured demand in their rate development, their revenues from tandem-switched transport and the tandem charge will be greatly overstated and the interconnection charge, which is residual in nature, will be significantly understated.[13]

6. For Central of Florida, Centel anticipates a revenue loss of more than $600,000, or 8.32 percent. For Central of Texas, the anticipated loss is less than $300,000, or 14.50 percent. Centel argues that, for Central of Florida, the interconnection charge is 11.45 percent less when priced using historical demand than with reconfigured demand, and Central of Texas is a 25.35 percent less.[14] United asserts that it will suffer losses of over $500,000, or 5.81 percent for United of Florida and less than $400,000, or 10.45 percent for United of Indiana. United argues that the interconnection charge is 8.91 percent less with historical demand than with reconfigured demand for United of Florida; for United of Indiana, United contends that the difference is 25.39 percent.[15] Rochester asserts that it will realize an immediate reduction of $1.02

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their total transport revenue under the existing rate structure (or revenue requirement for rate-of-return LECs); and (3) dividing by the number of historical interstate switched minutes of use. The tandem charge reflects facility demand because it is calculated by dividing the tandem revenue requirement by historical minutes of access tandem use.

[9] *Transport Order*, 7 FCC Rcd at 7038-40.

[10] Centel Petition at 2; United Petition at 2-3; Rochester Petition at 2.

[11] Centel Petition at 2-3; Rochester Petition at 4 (claiming that it is the only Tier 1 LEC that has experienced no demand for direct end-office transport); United Petition at 2-3.

[12] *Id.*

[13] Centel Petition at 3; Rochester Petition at 4-5; United Petition at 3.

[14] Centel Petition at 4.

[15] United Petition at 4.

million, or 15.11 percent in its switched transport revenues when using historical demand.[16]

7. Centel, Rochester and United also argue that the mid-course correction mechanism will not adequately protect them because the anticipated harm will result from IXCs switching to lower priced facilities. Petitioners assert that mid-course corrections are only available upon a showing that demand is less than that of the historical period (citing *First Reconsideration Order*, 8 FCC Rcd at 5379, para. 53).[17] Bell Atlantic filed comments in support of the requests for waiver of Rochester and United. Bell Atlantic asks that the relief sought by Rochester and United be extended to Bell Atlantic.[18]

8. Opposing the petitions for waiver, AT&T and CompTel argue that the Commission's rationale and action in the *First Reconsideration Order* are correct and that the petitioners' claim of disproportionate hardship due to little or no demand for direct-trunked transport does not warrant special treatment.[19] Furthermore, AT&T and CompTel contend that the mid-course correction mechanism is adequate, stating that there is nothing in the Commission's language that would preclude a mid-course correction for the demand shifts posited by Rochester, or those suggested by United and Centel.[20] Therefore, AT&T and CompTel assert that, because the Commission adopted a remedy for the potential problems raised by Centel, Rochester and United, there is no need to excuse those LECs from the requirements of the *Transport Orders*, and their waiver petitions should be denied.[21]

B. Discussion

9. A petition for waiver of the Commission's rules may be granted for good cause shown.[22] The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.[23] The Court of Appeals has stated that waivers permit a more rigorous adherence to an effective regulation by allowing the agency to take into account considerations of hardship, equity, or more effective implementation of overall policy on an individualized basis, while also emphasizing that, "[a]n applicant for waiver faces a high hurdle even at the starting

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[16] Rochester Petition at 4.

[17] Centel Petition at 5; Rochester Petition at 5; United Petition at 5.

[18] Bell Atlantic Comments at 2-3.

[19] AT&T Petition at 9-10; CompTel Petition at 28-32.

[20] AT&T Comments at 10-11; *accord* CompTel Comments at 30.

[21] AT&T Comments at 11-12; CompTel Comments at 30-32.

[22] *See* Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3.

[23] *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

gate."[24] In *WAIT Radio*, the court explained that "[t]he very essence of a waiver is the assumed validity of the general rule . . . ."[25] Given the validity of the rule, the test identified in *WAIT Radio*, requires the party seeking the waiver to demonstrate that the rule is unjust as applied to the party given the unique circumstances of the situation.[26] Waiver is thus appropriate only if special circumstances warrant a deviation from the general rule and such deviation will better serve the public interest than adherence to the general rule.[27] Therefore, the test for whether petitioners may be granted a waiver is whether they have shown such special circumstances as individualized hardship or inequity that warrant deviation from the Commission's transport rules and whether such deviation better serves the public interest.

10. We find that Centel, Rochester and United have not demonstrated that they face unique circumstances that warrant granting a waiver of the transport rules. We are not persuaded by their arguments that they face a different or greater impact than other LECs. Bell Atlantic's request for the same treatment, for itself and others, supports this conclusion. Moreover, we find that the *Transport Orders* adequately address the concerns articulated by Centel, Rochester and United. Historical demand is used in calculating the interconnection charges and the tandem charge in order to prevent LECs from increasing these charges by using excessive reconfiguration projections. If actual demand is substantially less than historical demand due to facility reconfigurations by IXCs, however, LECs may seek mid-course corrections. For example, LECs may seek a mid-course correction if their actual tandem-switched transport demand is substantially less than their historical tandem-switched transport demand. However, to mitigate any potential loss of revenue, the LECs would still have an obligation to reuse facilities efficiently.[28] Thus, Centel, Rochester and United have not demonstrated that IXC facility reconfigurations will result in substantial revenue shortfalls after a mid-course correction, if one is warranted.[29]

11. As stated above, petitioners have not demonstrated that their situations are unique. The fact that all three anticipate similar effects of the restructure distills

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[24] *WAIT Radio v. FCC*,, 418 F.2d 1153, 1157, 1159 (D.C.Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*) (an agency's obligation to give meaningful consideration to waiver applications does not contemplate that agency must or should tolerate evisceration of a rule by waivers).

[25] *WAIT Radio*, 418 F.2d at 1158.

[26] *See Northeast Cellular*, 897 F.2d at 1166, *citing WAIT Radio v. FCC*, 418 F.2d 1153, and *Industrial Broadcasting Co. v. FCC*, 437 F.2d 680 (D.C. Cir. 1970). *See e.g.*, In the Matter of Transport Rate Structure and Pricing, *Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 91-213, 8 FCC Rcd 7006, 7069-70 (paras. 150-151) (1992).

[27] *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d at 1166 (grant of waiver vacated and remanded for failure of FCC to articulate any standard by which underlying policy could be determined; record revealed nothing unique about applicant's situation).

[28] *First Reconsideration Order*, 8 FCC Rcd. at 5379.

[29] *See Northeast Cellular L.P. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio*, 418 F.2d at 1157. *See also* 47 C.F.R. § 1.3.

arguments of "disproportionate hardship."[30] Although petitioners could argue that the anticipated revenue losses are endemic to smaller LECs, Bell Atlantic's assertion of similar effects -- anticipated decline in tandem-switched transport from 20 percent of total transport to 8 percent[31] -- belies this contention, as does Bell Atlantic's implication that there are other "similarly situated LECs."[32] We therefore conclude that there is not good cause to grant the waiver requests of Centel, Rochester and United.

II. NON-PREMIUM TRANSPORT CHARGE WAIVERS

12. Section 69.113 of the Commission's rules[33] establishes non-premium access charges for access that is not equal to that provided to AT&T.[34] Non-premium rates were originally created to encourage the development of interexchange competition and to reflect the lower value of switched access that was of "inferior" quality compared to that provided to AT&T.[35] Non-premium rates are directly related to the conversion of switches to equal access capability; as each end office is converted to equal access, non-premium rates are no longer applicable. Most of the larger companies have very nearly completed their transition to equal access; which has resulted in very few minutes being assessed non-premium charges.[36]

A. Petitions

13. BellSouth, NYNEX, Rochester/Vista, SWB and US West filed petitions for waiver of the Section 69.113 requirement to apply non-premium charges to various transport elements.[37] These carriers in general argue that requiring non-premium charges for all transport elements is inconsistent with the Commission's transport policies and past treatment of non-premium charges. BellSouth, Rochester/Vista and US West seek to apply non-premium charges to the usage-sensitive rate elements only.[38] As an alternative to its waiver request, US West asks the Commission to clarify language in the *First*

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[30] *See* Centel Petition at 2; Rochester Petition at 3-4; United Petition at 2.

[31] Bell Atlantic Comments at 2.

[32] *Id.* at 3.

[33] 47 C.F.R. § 69.113.

[34] *See* 47 C.F.R. § 69.105(b)(1).

[35] Non-premium rates, accordingly, are not available to AT&T, which does not receive non-premium access.

[36] The most recent Industry Analysis Division information on percentage of access lines converted to equal access are as of second quarter 1991: For BOCs - 97.2%; for other large LECs 86.5%; for small LECs - 35.3%; total industry - 90.9%.

[37] BellSouth Petition at 3-4; NYNEX Petition at 3-4; Rochester/Vista Petition at 1-2; SWB Petition at 4-6; US West Petition at 2-3.

[38] BellSouth Petition at 3; Rochester/Vista Petition at 1-2; US West Petition at 2-3.

Reconsideration Order to the extent that it applies to the pricing of entrance facilities and direct-trunked transport, and to modify Section 69.113 to reflect this clarification.[39] SWB seeks waiver of the non-premium requirements for all switched transport elements, or, at a minimum, for the entrance facilities and direct-trunked transport components of the new rate structure, including direct-trunked transport used in connection with tandem-switched transport.[40] SWB seeks either a permanent waiver of the rules, or a temporary waiver until the issue can be considered in the context of the pending *Further Notice* in the transport docket.[41] NYNEX acknowledges that the continuation of non-premium rates may be reasonable for the interconnection charge, but seeks a waiver with respect to all other transport rate elements.[42] Finally, Cincinnati Bell seeks waiver of the non-premium access rules, arguing that it has only one non-equal access end office which will be converted by March, 1994.[43]

14. BellSouth asserts that non-premium charges were applied by LECs from the outset only to usage-sensitive rate elements and that the Commission never specifically determined that non-premium charges were appropriate for dedicated transport. BellSouth further argues that, despite the broad language of Section 69.113, that rule has never been interpreted to require the application of non-premium charges for non-recurring rate elements.[44] BellSouth states that all of its end offices have been converted to equal access; however it provides service jointly with some LECs which have not yet converted all of their end offices to equal access. It is in these instances, asserts BellSouth, that a broad interpretation of Section 69.113 would work an unreasonable result.[45]

15. Rochester/Vista, SWB and US West contend that application of non-premium charges to entrance facilities and direct-trunked transport rates would be contrary to the Commission's intent. Rochester/Vista, SWB and US West assert that the *Transport Orders* require dedicated transport rates to be established in relation to special access rates; however, special access rates do not contain non-premium elements.[46] Furthermore, according to Rochester/Vista and US West, a dedicated end office or entrance facility is the same, regardless of whether that facility connects to an equal access switch.[47]

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[39] US West Petition at 2-3.

[40] SWB Petition at 11-12.

[41] *Id.* at 1; *see Second Reconsideration Order, further recon. pending.*

[42] NYNEX Petition at 5.

[43] Cincinnati Bell Description and Justification at 3.

[44] BellSouth Petition at 2.

[45] *Id.*, at 4.

[46] Rochester/Vista Petition at 2; SWB Petition at 5-6; US West Petition at 2.

[47] Rochester/Vista Petition at 2; US West Petition at 2.

16. SWB argues that the Commission requires 80 percent of the tandem switch revenue requirement to be recovered in the interconnection charges and 20 percent to be recovered through the new tandem switching subelement, yet use of a non-premium structure would alter this allocation.[48] SWB also alleges that there are numerous technical barriers to assessing non-premium charges to entrance facilities and direct-trunked transport.[49]

17. NYNEX asserts that one of the objectives of the transport restructure was to move rates closer to costs, and that for entrance and interoffice facilities (direct-trunked and tandem-routed) the restructure sets rates very close to costs. NYNEX further contends that such costs have nothing to do with the switch to which they are connected. Accordingly, NYNEX argues, reducing these rates further, simply because the facilities are connected to a non-equal access switch, would be inconsistent with the Commission's intent that the restructure be cost based.[50] Thus, NYNEX contends, the Commission's recent decision to establish a competitive market for switched transport services through its expanded interconnection policies provides a rationale for not applying the non-premium discount to these services.[51] While less problematic, NYNEX contends that billing non-premium traffic on the tandem route alone would violate the intended balance sought by the Commission between tandem-switched rates and direct-trunked rates. Thus, according to NYNEX, the only restructured rate element that could arguably be related to the continuation of the non-premium rating is the interconnection charge.[52]

18. AT&T supports the requested waivers arguing that the *Transport Orders* neither require nor justify application of premium/non-premium differential rates to any transport element, and rules which require otherwise should be waived for all LECs.[53] AT&T contends that there is no record basis for premium/non-premium differentials in this proceeding. Further, AT&T asserts that there is no difference in cost to justify a rate differential in the LECs' restructured local transport rates, or to any subset of rate elements.[54]

19. CompTel opposes the petitions of NYNEX and SWB, while it does not oppose the petitions of BellSouth, Rochester and US West.[55] CompTel asserts that the original rationale for non-premium charges -- that IXCs that receive inferior access should

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[48] SWB Petition at 6.

[49] *See Id.*, at 8-11.

[50] NYNEX Petition at 3.

[51] *Id.* at 3-4.

[52] *Id.* at 5.

[53] AT&T Comments at 4-5.

[54] *Id.* at 5-6.

[55] CompTel Comments at 32-33.

not pay premium rates when AT&T is guaranteed equal access at all end offices -- remains valid today.[56] CompTel believes that the non-premium discount should apply to the interconnection charge and to the tandem-switched transport charge, because they are usage-based and applying the non-premium charges is relatively easy. CompTel asserts that because competitive IXCs are the primary users of tandem-switched transport, there is no unfairness in applying non-premium charges to tandem-switched transport rates, but not direct-trunked rates.[57]

B. Discussion

20. Section 69.113 of the Commission's rules[58] requires LECs to establish non-premium access charges for access deemed to be non-premium. Specifically, Section 69.113(d) requires LECs to compute non-premium charges for "the Transport element or elements."[59] Thus, by its terms, Section 69.113 applies to all transport elements. The *Transport Orders* restructure the transport element into new transport elements, and LECs still offer non-premium access.[60] We therefore conclude that the Commission's rules require the LECs to offer non-premium transport charges. There are, however, some administrative problems with applying non-premium charges to the flat-rate elements because the LECs do not have the capability of measuring or differentiating the type of traffic flowing through direct-trunked or entrance facilities. For example, for direct-trunked transport, according to SWB, there is no direct correlation between the selection of a particular transport route and the usage flowing over it that can be used to accurately separate the flat-rated charges between equal and non-equal access offices. Similarly, SWB argues, without recording capabilities and control over traffic patterns, a LEC lacks the ability to assess a non-premium rate to entrance facilities with any degree of certainty.[61]

21. Therefore, in view of the LECs' inability to measure or define the type of traffic carried over flat-rated facilities we will grant LECs waivers of Section 69.113 so that they will not have to offer non-premium rates for entrance facilities or direct-trunked transport. The application of non-premium charges to the new transport elements is pending reconsideration. Therefore, to preserve the cost-based characteristics of the rate elements, other than the interconnection charge, and to minimize the administrative burdens associated with an interim provision, we also extend this waiver to tandem-switched transport. Accordingly, we find that there is good cause to grant a waiver to all LECs allowing them to tariff non-premium charges for the interconnection charge

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[56] *Id.* at 33.

[57] *Id.*

[58] 47 C.F.R. § 69.113; *see also* MTS and WATS Market Structure, 97 F.C.C. 2d 682 (1983).

[59] 47 C.F.R. § 69.113(d).

[60] Premium access is defined, for purposes of distinguishing it from non-premium access, in Section 69.105(b)(1). 47 C.F.R. § 69.105 (b)(1).

[61] *See* SWB Petition at 8-11.

only. Since the majority of revenues will come from the interconnection charge initially,[62] this approach will have relatively little financial impact on the overall rate structure.

III. WAIVERS TO ADDRESS BILLING PROBLEMS

22. Under host-remote switching configurations, all IXC traffic is routed through a host office, which performs all measurement and recording functions for the remote office. Direct-trunked transport cannot be provided all the way from serving wire centers to remote offices, because facilities between host and remote offices are shared. The *First Reconsideration Order* stated that customers should be able to purchase direct-trunked transport from a serving wire center to a host office, and to pay a per-minute rate for the shared facilities between the host office and remote offices. Thus, for tandem-switched transport or direct-trunked transport, in host-remote configurations, LECs should bill for the two components (the component from the SWC or the tandem switch to the host switch and the component from the host switch to the remote switch.[63] Accordingly, LECs were directed to offer tandem-switched transport between the serving wire center and the host office based on the airline mileage between offices. For shared facilities between the host office and remote offices, local exchange carriers were directed to offer host-to-remote transport under a per-minute rate (based on tandem-switched transport rates, but with no tandem charge) with mileage measured between the host office and remote offices.[64]

A. Petitions

23. Bell Atlantic, GTE, Nevada Bell and Pacific Bell request delays in implementing the Commission's requirement that they offer tandem-switched transport between host offices and remote offices at tandem-switched transport rates, based on the airline mileage between those offices, until their billing systems can be converted to accomplish this. Bell Atlantic seeks a delay until June 1, 1994; GTE seeks a delay until March 1, 1994; Nevada Bell and Pacific Bell seek delays until July 1, 1994.[65]

24. GTE also seeks waiver, until March 1, 1994, of the obligation to offer both types of tandem-switched transport as required in the *First Reconsideration Order*,[66] which modified the rules to enable access customers to order direct-trunked transport between serving wire centers and access tandems, and tandem-switched transport between access tandems and end offices, as well as tandem-switched transport all the way from the end office to the serving wire center. GTE argues that its request is justified based on the

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[62] *Transport Order*, 7 FCC Rcd at 7038-39.

[63] *First Reconsideration Order*, 8 FCC Rcd at 5372.

[64] *Id.*

[65] Bell Atlantic Petition at 1-2; GTE Petition at 3-4; Nevada Bell Petition at 1-2; Pacific Bell Petition at 1-2.

[66] *First Reconsideration Order*, 8 FCC Rcd at 5372.

amount of work needed to alter its billing systems to accommodate this new obligation.[67] GTE argues that continuing with existing methods for billing host-remote configurations for traffic that is tandem-switched will result in lower transport bills for IXCs than under the host-remote requirement of the *Transport Order*, and thus, not harm any party.[68] Bell Atlantic states that, once it is able to bill minutes between host and remote offices on a per-minute, per-mile basis, it will update its tariff filing by incorporating this rate structure and will reduce its interconnection charge by the amount of restated revenues that would have resulted from the base period demand for per-minute host-remote services.[69]

25. Ameritech seeks a permanent partial waiver of the requirement that local exchange carriers charge separately for traffic carried between host offices and remote switches only where NXX codes are shared between remotes or between a host and the subtending remote switch. Ameritech argues that waiver is appropriate on the grounds that the administrative complexity associated with separately identifying and billing traffic to and from the remote would be enormous and the amount of affected traffic small.[70]

26. AT&T states that it has no objection to the requests for delays to modify billing with respect to host-remote configurations, so long as the billing modifications are made within a reasonable period of time and the LECs properly recompute their interconnection charge once new billing arrangements are implemented.[71]

B. Discussion

27. Host-remote configurations are an integral part of the transport networks of local exchange carriers. The Commission's *First Reconsideration Order*, which was released on July 21, 1993, addresses how the interim transport rate structure is applied to host-remote configurations. Since the release of the order, Bell Atlantic, GTE, Nevada Bell and Pacific Bell argue that there has not been sufficient time to convert their billing systems. These petitioners seek waivers for specific periods of time in order to complete conversion of their billing systems for host-remote configurations. We find that billing problems related to host-remote configurations present a unique hardship for carriers, which will be eliminated once the billing systems are sufficiently updated and implemented. The carriers propose, in the interim, to either bill nothing until their billing systems are updated, or, in the case of Bell Atlantic, increase the interconnection charge in the interim and reduce it by the same amount when the billing system is implemented, thus, preventing harm to any party. We find that the time periods for waivers requested are reasonable. Therefore, we conclude that there is good cause to grant the waivers

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[67] GTE Petition at 3-4.

[68] *Id.* at 4.

[69] Bell Atlantic Petition at 2.

[70] Ameritech Petition at 1-2.

[71] AT&T Comments at 3-4, n.4.

sought by Bell Atlantic, GTE, Nevada Bell and Pacific Bell delaying the offering of tandem-switched transport between the serving wire center and the host office, based on the airline mileage between those offices. Bell Atlantic, and any others that increase the interconnection charge in the interim, must reduce it by the same amount when the billing systems are implemented. We also grant GTE's request for a delay until March 1, 1994 of the obligation to offer both kinds of tandem-switched transport while it develops sufficient billing systems. GTE will, thus, continue its existing methods for billing host-remote configurations for traffic that is tandem-switched.

28. We deny Ameritech's request for permanent waiver of the host-remote requirement in circumstances in which NXX codes are shared between switches because we believe the problem can be solved through adjustments to current billing mechanisms. However, we will grant Ameritech a waiver for a six-month period, during which we expect Ameritech to make any necessary billing adjustments.

IV. NON-TIER 1 LEC WAIVERS

29. The *First Reconsideration Order* provided that non-tier 1 LECs do not have to file tariffs for direct-trunked transport until they receive a *bona fide* request; however, all LECs must tariff flat-rated entrance facilities charges.[72] A public notice was issued inviting non-Tier 1 LECs to apply for waiver from all or part of the transport restructure.[73] The *Public Notice* invited two types of waiver requests from non-Tier 1 companies who have not received a request for direct-trunked transport: (1) a partial waiver of the required restructure for LECs that wish to establish a single, bundled rate element encompassing the tandem-switched transport and interconnection charge elements; and (2) a complete waiver from the required restructure for LECs that do not provide entrance facilities. For both types of waiver, the *Public Notice* requires that the LEC not have received a *bona fide* request for direct-trunked transport.

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[72] *First Reconsideration Order*, 7 FCC Rcd at 7049.

[73] Public Notice, DA 93-1026, Common Carrier Bureau, released August 20, 1993 (*Public Notice*).

A. Petitions

30. Seven petitions were filed in response to the *Public Notice*.[74] Elkhart, Chickamauga, Pineland, Lafourche, Great Plains, GVNW[75] and certain subsidiaries of Rochester[76] each argue that they have not received *bona fide* requests from customers for direct-trunked transport, that they do not currently provide direct trunked transport to any customer and that they do not provide entrance facilities.[77] Pursuant to the *Public Notice*, these carriers did not file tariff revisions on September 1, 1993, pending disposition of the waiver requests.[78]

31. UTA, Vista and certain subsidiaries of Rochester[79], all non-Tier 1 companies, offer entrance facilities; however, they have not received *bona fide* requests for direct-trunked transport from IXCs. Thus, they seek waiver of the transport rules to establish a single, bundled rate element encompassing the tandem-switched transport and interconnection charge elements.[80] Lastly, NECA seeks a more general waiver for any of its participating carriers that fit either set of criteria identified in the *Public Notice*. NECA further states that carriers that use one of the waiver alternatives identified in the

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[74] Elkhart Telephone Company, Inc. (Elkhart), Chickamauga Telephone Corporation (Chickamauga) and United Telephone Association, Inc. (UTA), (Elkhart *et al.*); Great Plains Communications, Inc. (Great Plains); GVNW Inc./Management (GVNW); Lafourche Telephone Company (Lafourche); National Exchange Carrier Association (NECA); Pineland Telephone Cooperative, Inc. (Pineland); Rochester Telephone Corporation (Rochester), Vista Telephone Company of Minnesota and Vista Telephone Company of Iowa (Vista), (Rochester/Vista).

[75] GVNW's petition is filed on behalf of eight Tier-2B local exchange carriers: Ayrshire Farmers Mutual Telephone Company, C-R Telephone Company, Dubois Telephone Exchange, Inc., Leaf River Telephone Company, Madison Telephone Company, Montrose Mutual Telephone Company, Roosevelt County Rural Telephone Cooperative and Webb-Dickens Telephone Corporation.

[76] Inland Telephone Company, Lakeside Telephone Company, Midland Telephone Company, Mt. Pulaski Telephone Company, Orion Telephone Company, Prairie Telephone Company, Schuyler Telephone Company (Illinois study area only) and Thorntown Telephone Company.

[77] Elkhart *et al.* Petition at 4-5; Great Plains Petition at 1; GVNW Petition at 1-2; Lafourche Petition at 1-2; Pineland Petition at 2-3; Rochester/Vista Petition at 3-4.

[78] *Id.*; *see Public Notice* at 1.

[79] AuSable Valley Telephone Company, Breezewood Telephone Company, Canton Telephone Company, C, C, & S Telephone Company, Enterprise Telephone Company, Highland Telephone Company, Lakeshore Telephone Company, Lakewood Telephone Company, Midway Telephone Company, Mondovi Telephone Company, Monroeville Telephone Company, Ontonagon County Telephone Company, Oswago River Telephone Company, S & A Telephone Company, Seneca-Gorham Telephone Company, Southland Telephone Company, Sylvan Lake Telephone Company and Urban Telephone Company.

[80] Elkhart *et al.* Petition at 5; Rochester/Vista Petition at 3-4.

Public Notice will be identified by an Office Type Code in the NECA Tariff F.C.C. No. 4, Wire Center Information tariff.[81]

32. AT&T states that it has no objection to granting waivers where no *bona fide* requests for dedicated facilities have been made, on the condition that entrance facilities are made available as required by the *Transport Orders*. In the event entrance facilities are provided at a later time, AT&T argues that interconnection charges should be recalculated to account for the revenue.[82] In response, Pineland asserts that AT&T seeks to apply unwarranted conditions upon the waivers issued pursuant to the *Public Notice*.[83]

B. Discussion

33. Pursuant to the standard established in the *First Reconsideration Order*, we find that the petitions have made the necessary showing to justify grant of the waivers described above. Requiring these carriers to fully implement all elements of the new transport structure when they have no request for direct-trunked transport would impose a substantial administrative burden upon them. Conversely, relieving them of all or part of this obligation until they receive a *bona fide* request for direct-trunked transport mitigates the administrative costs and does not harm any other party. Additionally, grant of these waiver requests is consistent with the policies established in the *Transport Orders*. Accordingly, we conclude that there is good cause to grant these waivers.

34. We are also aware that a number of carriers being granted waivers are also involved in meet-point billing arrangements. Whenever more than one LEC participates in providing access service to access customers, but the participating LECs do not provide a single bill for such service, those LECs are required to justify their failure to establish a single billing method.[84] Concerning the transport restructure, the smaller carriers provide local transport services with larger LECs through meet point billing arrangements. Typically, the larger carriers provide service through a tandem switch, the smaller carrier provides the end office, and each party's facilities (trunks) join at a "meet point." We recognize that maintaining a single-billing arrangement in circumstances where parties to the meet-point billing arrangements maintain different rate structures may be unreasonable given current time constraints. Therefore, pursuant to Section 1.3 of the Commission's rules,[85] we grant a waiver for one year, to permit multiple billing arrangements where parties to meet-point billing arrangements maintain different rate structures as a result of waivers granted pursuant to the *Public Notice*. We reiterate the Commission's strong preference for single bills for meet-point billing because it enhances billing accuracy and

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[81] NECA Petition at 1-2.

[82] AT&T Comments at 4, n.4.

[83] Pineland Reply at 5-7.

[84] Access Billing Requirements for Joint Service Provision, CC Docket No. 87-579, Phase II, DA 88-1544, released Oct. 4, 1988 (Com. Car. Bur.) *upheld on reconsideration* 4 FCC Rcd 7914 (1989).

[85] 47 C.F.R. § 1.3.

customer convenience. Therefore, we strongly urge cooperation among LECs to implement single bills well before the expiration of this waiver.

V. SNET PETITION

A. Petition

35. SNET seeks waiver of the *First Reconsideration Order* so that it may use its current interstate special access rate structure as the basis for its restructured transport rates, rather than its 1992 rate structure.[86] SNET claims that its 1992 rate structure for special access DS1 and DS3 channel mileage components was very complex, containing several mileage bands and different rates in many bands.[87] SNET states that, effective July 2, 1993, it eliminated the rate differential in the mileage bands, and set the fixed component and the per mile charge of the channel mileage rate the same across all bands for Special Access DS1 and DS3 services.[88] SNET contends that this structure is simpler, more cost-based, more consistent with industry rate structure, and easier to administer than its former rate structure. Accordingly, SNET seeks to: (1) adjust each of its September 1992 special access rates by the difference in the September 1992 and July 1993 special access price cap index; and (2) apply price cap restructure principles to convert the six mileage bands to two bands which apply the same fixed and per mile charge to any circuit length over zero miles, and then use these special access rates to set its dedicated transport rates.[89] SNET also asserts that its proposed methods will maintain revenue neutrality.[90] SNET's petition was not opposed.

B. Discussion

36. We agree that SNET's current rate structure is simpler than the former rate plan, more consistent with the industry rate structure and more easily converted to the Commission's new transport rate structure. We find SNET's proposal to be reasonable in light of the fact that the results will be revenue neutral. We therefore conclude that there is good cause to grant the waiver requested by SNET as herein discussed.

VI. ORDERING CLAUSES

37. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 4(i), and Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 , 0.291, that the Petitions for Waiver filed by Central Telephone Company of Florida, Central Telephone Company of Virginia,

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[86] SNET Petition at 1.

[87] *Id.* at 2.

[88] *Id.* at 2-3.

[89] *Id.* at 3-4.

[90] *Id.* at 2.

Central Telephone Company of Texas and Central Telephone Company - North Carolina, Rochester Telephone Corporation, and United Telephone Company of Florida, United Telephone Company of Indiana, and United Telephone - Southeast, Inc., for waiver of requirements of the Transport Rate Structure and Pricing, *First Memorandum Opinion and Order on Reconsideration*, 8 FCC Rcd 5370 (1993), that local exchange carriers utilize historic facilities demand in calculating certain transport rate elements, ARE DENIED.

38. IT IS FURTHER ORDERED, that waiver of Section 69.113 of the Commission's rules, 47 C.F.R. § 69.113, for all local exchange carriers to the extent necessary to allow them to tariff non-premium charges for the interconnection charge only, IS GRANTED to the extent specified in paragraph 21 *supra*.

39. IT IS FURTHER ORDERED, that waivers of the host-remote requirements of the Transport Rate Structure and Pricing, *First Memorandum Opinion and Order on Reconsideration*, 8 FCC Rcd 5370 (1993), for the Ameritech Operating Companies, the Bell Atlantic Telephone Companies, the GTE Telephone Operating Companies, the GTE System Telephone Companies, Nevada Bell, and Pacific Bell, as discussed in section III.B. of this order, and for the time periods addressed therein, ARE GRANTED.

40. IT IS FURTHER ORDERED, that waivers requested by non-Tier 1 local exchange carriers and the National Exchange Carrier Association, as discussed in Section IV of this order, ARE GRANTED.

41. IT IS FURTHER ORDERED, that waivers of the Commission's requirements to use a single bill method in meet-point billing arrangements, of Access Billing requirements for Joint Service Provision, CC Docket No. 87-579, Phase II, DA 88-1544, released Oct. 4, 1988, for parties to meet-point billing arrangements that maintain different rates structures as a result of waivers granted in paragraph 40, *supra*, for a period of one year from the date of release of this order, ARE GRANTED.

42. IT IS FURTHER ORDERED, that waiver of the requirement to base transport rates on the local exchange carrier's 1992 special access rate structure, of the Transport Rate Structure and Pricing, *First Memorandum Opinion and Order on Reconsideration*, 8 FCC Rcd 5370 (1993), for Southern New England Telephone Company, as discussed in Section V of this order, IS GRANTED.

FEDERAL COMMUNICATIONS COMMISSION

A P Vaughan

By Kathleen B. Levitz
Acting Chief
Common Carrier Bureau

APPENDIX A

Ameritech Operating Companies (Ameritech)

Bell Atlantic Telephone Companies (Bell Atlantic)

BellSouth Telecommunications, Inc. (BellSouth)

Central Telephone Company (Florida, Virginia, Texas, North Carolina) (Centel)

Cincinnati Bell Telephone Company (Cincinnati Bell)

Elkhart Telephone Company (Chickamauga Tel. Co., United Tel. Assn., Inc.) (Elkhart *et al.*)

Great Plains Communications, Inc. (Great Plains)

GTE Telephone Operating Companies and GTE System Telephone Companies (GTE)

GVNW Inc./Management (GVNW)

Lafourche Telephone Company (Lafourche)

National Exchange Carrier Association (NECA)

Nevada Bell

NYNEX Telephone Companies (NYNEX)

Pacific Bell

Pineland Telephone Cooperative, Inc. (Pineland)

Rochester Telephone Corporation and Vista Telephone Company (Minnesota and Iowa) (Rochester/Vista)

Rochester Telephone Corporation (Rochester)

Southern New England Telephone Company (SNET)

Southwestern Bell Telephone Company (SWB)

United Telephone Company (Florida, Indiana, Southeast, Inc.) (United)

US West Communications, Inc. (US West)

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

January 24, 1994

IN REPLY REFER TO:
1800C3-B

Released: January 27, 1994

CERTIFIED MAIL -- RETURN RECEIPT REQUESTED

Storer Cable
1536 Story Ave.
Louisville, KY 40206

Dear Cable System Operator:

This letter constitutes an admonishment for your failure to comply with Section 76.207(a) and (c) of the Commission's rules (47 C.F.R. Section 76.207(a) & (c)).

BACKGROUND

This action results from the audit of Storer Cable, commenced June 10, 1992, to ascertain your compliance with the political programming laws. On that date, an FCC field inspector arrived at Storer Cable to obtain a copy of your disclosure statement, if written, and your political file. It appears from the material you furnished the inspector and your response to our September 24, 1992, letter of inquiry that Storer Cable has violated Section 76.207(a) and (c) of the Commission's rules by failing to include in its political file the required information concerning requests for time and the disposition of such requests, by legally qualified candidates for public office during the 1990 general election, the 1991 primary and general elections, and the 1992 primary election.

In our September 24 letter of inquiry, we asked you to answer seven questions raised by our review of the disclosure materials and the political file provided to the inspector. Based on information contained in rate cards provided the inspector, we asked two questions relating to your compliance with the lowest unit charge (LUC) requirements set out in Section 76.206(a)(1)(vi) and (xi) of the rules. Four questions related to your disclosure of sales information as required by Section 76.206(b)(1-5) of the rules. Your October 15 response satisfactorily answered our concerns with respect to both disclosure and LUC obligations.

The seventh question dealt with the apparent absence of requisite materials from the political file, particularly any record of the requests for time made by candidates, the contracted for

schedules of time purchased by candidates, the charges made for the individual spots or programs, and the classes of time purchased. Specifically, as the letter of inquiry noted, the political file contained only one document captioned "Political Cable Casting," which consisted of a list of names of candidates who had purchased time from Storer Cable since 1983, the dates of the purchases, the sponsor of the advertisements, and the total charges. You provided one additional file, maintained separate from the political file, which contained contracts or invoices for the purchase of time by four candidates during the 1992 primary election.

In your October 15 response to our inquiry, you stated with respect to the political file that:

> [W]hile information concerning the classes of time purchased and when the spots actually aired may not have been discernible from the 'Political Cable Casting' document in the political file, it was available for 1992. We also believe that pursuant to paragraph 91 of the June 11, 1992 Memorandum Opinion and Order we are permitted to maintain an alternative method than the political file for allowing opposing candidates to ascertain the exact time the candidate spots aired. Our system personnel would have provided immediate assistance and access to all of our information concerning actual air time had a candidate presented himself or herself to the offices for purposes of viewing our political file. Although our 1992 contracts were maintained in another file, when the field inspector asked for the political file, it and the contract file were provided, as they would have been to any member of the public. However, we have never had a request made, in person, by a member of the public for our political file.

DISCUSSION

Political File

Section 76.207 of the Commission's rules provides, in pertinent part, as follows:

> (a) Every cable television system shall keep and permit public inspection of a complete and orderly record (political file) of all requests for cablecast time made by or on behalf of a candidate for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the

request is granted. The "disposition" includes the schedule of time purchased, when spots actually aired, the rates charged, and the classes of time purchased.

* * * *

(c) All records required by this paragraph shall be placed in the political file as soon as possible and shall be retained for a period of two years. As soon as possible means immediately absent unusual circumstances.

Storer's admitted failure to maintain in its political file complete and specific information concerning requests made by, or on behalf of, legally qualified candidates, or regarding the disposition of such requests, particularly the schedule of time purchased, specific rates charged, or the classes of time contracted for by any candidate is in violation of Section 76.207(a). With a single exception, discussed below, the rule does not permit the maintenance of other files separate from the political file to provide the required information as was done by your system for the 1992 primary election. As stated clearly in the rule, the political file itself must be "complete" and must contain the schedule of time purchased, the rates, and the classes of time purchased.[1]

Furthermore, the single exception adopted in the Commission's June 11, 1992, Memorandum Opinion and Order[2] did not modify the political file requirements set out above. The Memorandum Opinion and Order recognized that the actual schedule of cablecasts may differ from the contracted schedule due to preemptions or other considerations and that it may be unduly burdensome to require immediate notations in the file each time a variance from the schedule occurs. Thus, the Commission concluded that the schedule, as aired, need not be placed in the file immediately but must be made available upon request.[3] Indeed, your October 15 response states correctly that the Commission's modification related solely to the actual broadcast schedule. In addition, the Memorandum Opinion and Order required that systems utilizing this approach must place a notation in the political file to alert interested persons to the fact that

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[1] Codification of the Commission's Political Programming Policies, 7 FCC Rcd 678 (1991)("Report and Order"); recon. denied, 7 FCC Rcd 4611 (1992)("Memorandum Opinion and Order".

[2] 7 FCC Rcd 4611.

[3] Id. at 4621 n.151.

specific information about actual schedules would be provided immediately upon request. No such notation appears in your political file.

Moreover, your October 15 response fails to provide any explanation for the absence of the requisite information for the 1990 general election and 1991 primary and general elections, all of which fell within the two-year period for retention of political file materials required by Section 76.207(c). Any person seeking information concerning 1990 and 1991 elections would be left uninformed. This constitutes a further violation of the political file rule.

Maintenance of a complete and orderly political file is an essential element of Section 315 of the Communications Act, as implemented by Section 76.207 of the rules. A system generally has no obligation to notify opposing candidates when a candidate appears on its facility, and opposing candidates have only seven days within which to make a request for "equal opportunities." Failure to include the necessary information in the file denies this information to opposing candidates who may wish to exercise their equal opportunities rights.

CONCLUSION

Based on the foregoing, we hereby ADMONISH you for the violations of Section 76.207(a) and (c) of the rules. This matter will be made part of our permanent records. You should place this letter in the public inspection file required to be maintained by Section 76.305 of the rules.

Sincerely,

Roy J. Stewart
Chief, Mass Media Bureau

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

DA 94-142

In the Matter of	)
	)
Local Exchange Carriers' Rates, Terms,	)
and Conditions for Expanded	)
Interconnection for Switched Transport	)
	)

MEMORANDUM OPINION AND ORDER

Adopted: February 10, 1994; Released: February 14, 1994

By the Acting Chief, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. In the Special Access Expanded Interconnection Order, the Commission required most Tier 1 local exchange carriers (LECs) to permit competitors and users to terminate their own special access transmission facilities at LEC central offices and interconnect with LEC special access services.[1] The Special Access Expanded Interconnection Order mandated interconnection through physical collocation. However, the Commission also decided to exempt particular central offices from the physical collocation requirement if LECs could make a factual showing that those offices did not have sufficient space for physical collocation.[2] The tariffs for special access expanded interconnection were suspended for one day and are currently subject to an investigation.[3]

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[1] Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, 7 FCC Rcd 7369 (1992) (Special Access Expanded Interconnection Order). The Special Access Expanded Interconnection Order excluded members of National Exchange Carrier Association (NECA) pools from this filing requirement. Puerto Rico Telephone Company is the only Tier 1 carrier participating in NECA pools. Special Access Expanded Interconnection Order, 7 FCC Rcd at 7398.

[2] Special Access Expanded Interconnection Order, 7 FCC Rcd at 7390-91 (para. 41), 7407-08 (paras. 77-80) n.190.

[3] See Ameritech Operating Companies, CC Docket No. 93-162, 8 FCC Rcd at 4589 (Com.Car.Bur. 1993) (Special Access Expanded Interconnection Investigation Order); Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Special Access, CC Docket No. 93-162, 8 FCC Rcd 6909 (Com.Car.Bur. 1993) (Special Access Expanded Interconnection Designation Order); Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection for Special Access, CC Docket No. 93-162, 8 FCC Rcd 8344 (Com.Car.Bur. 1993) (Special Access Expanded Interconnection Interim Prescription Order).

2. On September 2, 1993, the Commission released the Switched Transport Expanded Interconnection Order, which required LECs to file tariffs for interstate switched transport expanded interconnection service.[4] Specifically, the Commission required the LECs subject to the special access expanded interconnection requirement to offer expanded interconnection for interstate switched transport service.[5] The Commission directed LECs to use for switched transport expanded interconnection the rate structures they established for special access expanded interconnection, unless they could justify additional rate elements for switched transport expanded interconnection.[6] Also, LECs were required to use the same methodologies they used to develop their special access expanded interconnection rates.[7]

3. On November 18, 1993, 15 parties filed tariffs for expanded interconnection for interstate switched transport services.[8] Six petitions to reject or suspend and investigate these filings were filed on December 13, 1993, and twelve oppositions to these petitions were filed on December 30, 1993.[9] For reasons discussed below, we grant these petitions to the extent specified below. We expect to issue a designation order at a later time.

II. RATE LEVEL ISSUES

4. Pleadings. The petitioners argue that most of the LECs base their switched transport expanded interconnection tariffs on their special access expanded interconnection tariffs, and that these tariffs should be suspended and investigated because the special access expanded interconnection tariffs are currently under investigation.[10] Several LECs argue that the petitioners simply repeat arguments they made in the special access expanded interconnection investigation, and that the LECs already have responded to those arguments in that context.[11] Pacific and Southwestern Bell argue that similarity between special access and switched transport expanded interconnection rates does not warrant rejection of switched transport expanded interconnection rates.[12] US West argues that the petitioners' contentions lack

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[4] Expanded Interconnection with Local Telephone Company Facilities, Second Report and Order and Third Notice of Proposed Rulemaking, CC Docket No. 91-141 Transport Phase I, 8 FCC Rcd 7374 (1993) (Switched Transport Expanded Interconnection Order).

[5] Id. at 7399 (para. 40).

[6] Id. at 7417-18 (para. 72-75).

[7] Id. at 7419-20 (para. 79-81).

[8] The switched transport expanded interconnection filings are listed in Appendix A.

[9] The parties filing pleadings, and the acronyms by which we refer to them, are listed in Appendix B.

[10] Time Warner Petition at 8-9; MFS Petition at 3; ALTS Petition at 3-4; TDL Petition at 4-5.

[11] Bell Atlantic Reply at 1; Ameritech Reply at 1; US West Reply at 4-5, App. A, App. B.

[12] Pacific Reply at 8-10; Southwestern Bell Reply at 1-2.

sufficient specificity to warrant rejection or suspension of any individual LEC's tariff.[13] Rochester contends that its switched transport expanded interconnection tariffs should take effect as scheduled. Rochester argues that, because its switched transport expanded interconnection rates are based on its special access expanded interconnection rates, and none of the issues raised by parties in the special access expanded interconnection investigation are relevant to Rochester, its switched transport expanded interconnection rates are reasonable. Rochester also suggests that we terminate our investigation of its special access expanded interconnection tariff.[14] United, however, believes that suspension of the switched transport expanded interconnection tariffs is appropriate until the special access expanded interconnection investigation is completed.[15] Some LECs advocate consolidating any investigation of switched transport expanded interconnection rates with the ongoing special access expanded interconnection investigation.[16]

5. TDL notes that LECs are required to use consistent costing methodologies to develop rates, and to justify any differences in overhead loadings.[17] TDL asserts generally that the switched transport expanded interconnection rates impose exorbitant, unnecessary, and duplicative charges on interconnectors, and therefore unreasonably restrict the availability of expanded interconnection.[18] TDL asserts that US West's DS1 and DS3 switched transport expanded interconnection rates are approximately triple those of Ameritech, BellSouth, and Pacific Bell, and are therefore unjust and unreasonable.[19] TDL also maintains that variation between the rates of Ameritech, BellSouth, and Pacific Bell warrants investigation of these rates.[20] TDL also criticizes the imposition of the cross connect charge, arguing that the LECs do not include cross connect charges in their access service rates. TDL also asserts that the LECs' switched transport expanded interconnection reflect an allocation of larger shares of overhead costs to that service than to access service provided in competition with CAPs. TDL contends that each of these charges is unreasonably discriminatory in violation of Section 202 of the Communications Act, 47 U.S.C. § 202.[21] TDL complains that the LECs have adopted expanded interconnection architectures that entail unnecessary charges, and make comparison

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[13] US West Reply at 4.

[14] Rochester Reply at 1-3.

[15] United Reply at 1-2.

[16] Pacific Bell Reply at 8-10; BellSouth Reply at 2-3.

[17] TDL Petition at 3, citing Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7419 (para. 79).

[18] Id. at 3-4.

[19] Id. at 8.

[20] Id. at 8-9.

[21] Id. at 6-7.

to the LECs' own access services difficult.[22] TDL asserts generally that imposing costs on interconnectors that are not included in the LECs' access rates is unreasonably discriminatory.[23]

6. GTE and SNET maintain that they included adequate cost support for their switched transport expanded interconnection rates in their special access expanded interconnection filings.[24] NYNEX and Cincinnati Bell claim that they developed their switched transport expanded interconnection rates in accordance with the Commission's Rules.[25] Pacific notes that its rate levels and overhead loading factors were reduced very little in the special access expanded interconnection investigation, and argues that its switched transport expanded interconnection rates are lawful because they were developed using the same methodology.[26] In response to TDL's allegations regarding its rates, Pacific contends that it used prospective costs to develop rates, and asserts that the Commission supported use of this methodology in another proceeding.[27] NYNEX maintains that its switched transport expanded interconnection rates are based on fully distributed costs (FDC), which NYNEX describes as direct costs plus uniform overhead loadings.[28] NYNEX claims that, with one exception, it used the same rate development methodology for all its switched transport expanded interconnection rates as it used for special access expanded interconnection. The exception is the carrying charge factor (CCF), which NYNEX states is based on a composite of switched access and special access ARMIS data.[29]

7. Time Warner asserts that the LECs have not provided adequate cost support for the central offices added in their November 18 tariff filings.[30] Several LECs assert that they already have provided cost support for these new central offices.[31] Ameritech maintains it is not required to submit additional cost support because it does not use central office-specific rates.[32]

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[22] Id. at 7-8.

[23] Id. at 8. See also ALTS Petition at 9-10 (NRCs may be discriminatory if not included in LECs' rates).

[24] GTE Reply at 8-9; SNET Reply at 1-2.

[25] NYNEX Reply at 2-4; Cincinnati Bell Reply at 1-2.

[26] Pacific Reply at 3-4.

[27] Id. at 7-8 (quoting Open Network Architecture Tariffs of Bell Operating Companies, CC Docket No. 92-91, FCC 93-532, at paras. 36, 40 (released December 15, 1993)).

[28] NYNEX Reply at 2-4.

[29] Id. at 5-6.

[30] Time Warner Petition at 10.

[31] Pacific Reply at 7; Bell Atlantic Reply at 4 and Workpapers 1-2; Southwestern Bell Reply at 7-8; GTE Reply at 8-9.

[32] Ameritech Reply at 3.

8. Discussion. In the Special Access Expanded Interconnection Investigation Order, the Bureau found that the special access expanded interconnection tariffs raised significant questions of lawfulness regarding cost allocations, rate levels, rate structures, and terms and conditions of service.[33] Because the LECs generally have modelled their switched transport expanded interconnection tariffs on their special access expanded interconnection tariffs, the switched transport expanded interconnection tariff filings also raise significant questions of lawfulness. Accordingly, we suspend these tariffs for one day and impose an accounting order.[34]

III. OTHER ISSUES

A. Individual Case Basis Rates

9. Bell Atlantic has proposed individual case basis (ICB) rates for virtual collocation equipment installation.[35] In the Special Access Expanded Interconnection Order, the Commission required LECs to establish generally available rates for special access expanded interconnection service, which includes optional features. The Commission also found that, while rates might vary between central offices due to differences in costs, rates should be uniform for all expanded interconnection customers at each central office.[36] Accordingly, the

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[33] Special Access Expanded Interconnection Investigation Order, 8 FCC Rcd at 4591 (para. 7).

[34] Several petitioners noted that GTE set its DS3 cross connect charge higher in its switched transport expanded interconnection tariff than in its special access expanded interconnection tariff, in order to recover the costs of multiplexing down to the DS1 level for interconnection with the switch. The petitioners also argued that GTE's higher DS3 cross connect charge appears unreasonable because no other LEC has proposed a higher DS3 cross connect charge. TCG Petition at 10; Time Warner Petition at 7-8; ALTS Petition at 5-6; MCI Petition at 4-5. On January 27, 1994, GTE filed tariff revisions to lower its DS3 cross connect rate for switched transport expanded interconnection to be equal to the rate for DS3 cross connects for special access expanded interconnection. GTE Telephone Operating Companies, Revisions to Tariff F.C.C. No. 1, Transmittal No. 856, filed January 27, 1994; GTE System Telephone Companies, Revisions to Tariff F.C.C. No. 1, Transmittal No. 78, filed January 27, 1994. Because GTE has eliminated the discrepancy between switched transport and special access rates in its DS3 cross connect rate, we need not investigate this issue.

[35] Bell Atlantic Telephone Companies, Tariff F.C.C. No. 1, Transmittal No. 612, Section 19.7.2, 4th Revised Page 971 (effective February 15, 1994). Originally, Southwestern Bell planned to charge ICB rates for any optional features available with switched transport service ordered by interconnectors with switched transport expanded interconnection service. Southwestern Bell Telephone Company, Tariff F.C.C. No. 68, Transmittal No. 2308, Section 25.2(A)(11). However, Southwestern Bell has voluntarily decided to withdraw these ICB rates from its tariff. See Southwestern Bell Application No. 343, filed February 9, 1994.

[36] Special Access Expanded Interconnection Order, 7 FCC Rcd at 7442 (paras. 157-158). The Commission recognized that individually negotiated rates may be appropriate for equipment dedicated to interconnectors under a virtual collocation arrangement. Id. at 7442-43 (para. 159). However, the Commission also concluded that charges for installation of equipment dedicated to interconnectors under a virtual collocation arrangement should be uniform for all interconnectors in each central office. Id. at 7442 (para. 158).

Bureau ordered several carriers to remove references to ICB rates in their tariffs.[37] The Commission established the same tariffing standards for switched transport expanded interconnection as it did for special access expanded interconnection.[38] Accordingly, Bell Atlantic and any other LEC that has tariffed any switched transport expanded interconnection rate elements on an ICB basis are ordered to delete references to ICB charges from their switched transport expanded interconnection tariffs and to tariff either specific rates or time and material charges for those rate elements.

B. Other Issues

10. The petitioners raise several additional issues. In particular, a number of LECs include multiplexing charges in their switched transport expanded interconnection rates that are not included in their special access expanded interconnection rates.[39] We will discuss in detail the contentions raised by the petitioners, and designate specific issues for investigation in a future Order.[40]

IV. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that the petitions for rejection or suspension and investigation filed by the parties listed in Appendix A of this Order, against the tariff filings captioned above, ARE GRANTED to the extent indicated above, and otherwise ARE DENIED.

12. IT IS FURTHER ORDERED that pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. §

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interconnectors in each central office. Id. at 7442 (para. 158).

[37] Ameritech Operating Companies, Revisions to Tariff F.C.C. No. 2, CC Docket No. 93-162, 8 FCC Rcd 4589, 4600 (para. 61) (Com.Car.Bur. 1993) (Special Access Expanded Interconnection Investigation Order).

[38] Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7421-22 (para. 86).

[39] United and Centel have proposed additional multiplexing charges applicable whenever a collocator orders a DS3 cross connect. Centel Telephone Companies, Tariff F.C.C. No. 1, Transmittal No. 239, Section 15.6(D)(15), 2nd Revised Page 481 (effective date: February 15, 1994); United Telephone System, Tariff F.C.C. No. 5, Transmittal No. 339, Section 17.4(D)(10), Original Page 991.1 (effective date: February 15, 1994). Similarly, Bell Atlantic requires switched transport expanded interconnection customers to pay additional DS3 to DS1 multiplexing charges established in its switched transport tariff, in addition to switched transport expanded interconnection charges. Bell Atlantic Transmittal No. 612, Description and Justification (D&J) at 3.

[40] In particular, several petitioners observe that Southwestern Bell has proposed a Switched Transport Connection charge of $6.04 per month, to recover the costs of providing a connection between the digital cross connect frame and the switch. ALTS and TCG maintain that the costs of this connection are already recovered in Southwestern Bell's switched access rates. ALTS Petition at 5; TCG Petition at 10. On February 9, 1994, Southwestern Bell agreed to lower its switched transport connection charge to zero. Because Southwestern Bell has eliminated the discrepancy between switched transport and special access rates in their expanded interconnection tariffs, we need not investigate this issue further.

0.291, the tariff transmittals captioned above ARE SUSPENDED for one day and an investigation of the referenced tariff transmittal IS INSTITUTED.

13. IT IS FURTHER ORDERED that parties subject to this investigation SHALL FILE tariff revisions reflecting this suspension no later than 10 days from the release date of this order. For these purposes, we waive Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58, 61.59. Parties subject to this investigation should cite the "DA" number of this Order as the authority for these filings.

14. IT IS FURTHER ORDERED that pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), parties subject to this investigation shall keep accurate account of all amounts received by reason of the rates that are the subject of this investigation.

15. IT IS FURTHER ORDERED that the Bell Atlantic Telephone Companies and Southwestern Bell Telephone Company SHALL FILE tariff revisions removing individual case basis pricing from their expanded interconnection service, no later than 10 days from the release date of this order. Carriers should cite the "DA" number of this Order as the authority for these filings.

16. IT IS FURTHER ORDERED that the Ameritech Operating Companies SHALL FILE tariff revisions removing prohibitions on ratcheting from its expanded interconnection service, no later than 10 days from the release date of this order. For purposes of compliance with this Order, we waive Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58, 61.59. The Ameritech Operating Companies should cite the "DA" number of this Order as the authority for this filing.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz

Kathleen B. Levitz
Acting Chief
Common Carrier Bureau

APPENDIX A

Switched Transport Expanded Interconnection Tariff Filings

Ameritech Operating Companies, Revisions to Tariff F.C.C. No. 2, Transmittal Nos. 754, 755, 771.

Bell Atlantic Telephone Companies, Revisions to Tariff F.C.C. No. 1, Transmittal No. 612.

BellSouth Telecommunications, Inc., Revisions to Tariff F.C.C. No. 1, Transmittal Nos. 166, 167, 187.

Cincinnati Bell Telephone Co., Revisions to Tariff F.C.C. No. 35, Transmittal No. 642.

GTE Telephone Operating Companies, Revisions to Tariff F.C.C. No. 1, Transmittal Nos. 847, 856.

GTE System Telephone Companies, Revisions to Tariff F.C.C. No. 1, Transmittal Nos. 69, 78.

NYNEX Telephone Companies, Revisions to Tariff F.C.C. No. 1, Transmittal No. 250.

Pacific Bell, Revisions to Tariff F.C.C. No. 1, Transmittal Nos. 1663, 1673.

Nevada Bell, Revisions to Tariff F.C.C. No. 1, Transmittal No. 181.

Rochester Telephone Corporation, Revisions to Tariff F.C.C. No. 1, Transmittal No. 211.

Southwestern Bell Telephone Company, Revisions to Tariff F.C.C. No. 68, Transmittal No. 2308.

Southern New England Telephone Company, Revisions to Tariff F.C.C. No. 39, Transmittal No. 588.

United Telephone Companies, Revisions to Tariff F.C.C. No. 5, Transmittal No. 239.

Central Telephone Companies, Revisions to Tariff F.C.C. No. 1, Transmittal No. 339.

US West Communications, Inc., Revisions to Tariff F.C.C. No. 1, Transmittal No. 421.

APPENDIX B

Parties Filing Pleadings

I. Petitions for Rejection or Suspension and Investigation

1. Association for Local Telecommunications Services (ALTS)
2. MCI Telecommunications Corporation (MCI)
3. MFS Communications Group (MFS)
4. Teleport Communications Group (TCG)
5. Teleport Denver Ltd. (TDL)
6. Time Warner Communications Holdings, Inc. (Time Warner)

II. Oppositions to Petitions for Rejection or Suspension and Investigation

1. Ameritech Operating Companies (Ameritech)
2. Bell Atlantic Telephone Companies (Bell Atlantic)
3. BellSouth Telecommunications, Inc. (BellSouth)
4. Cincinnati Bell Telephone Co. (Cincinnati Bell)
5. GTE Service Corporation, on behalf of its GTE affiliated Telephone Operating Companies and the GTE System Telephone Companies (together, GTE)
6. NYNEX Telephone Companies (NYNEX)
7. Pacific Bell and Nevada Bell (together, Pacific)
8. Rochester Telephone Corporation (Rochester)
9. Southwestern Bell Telephone Company (Southwestern Bell)
10. Southern New England Telephone Company (SNET)
11. Central Telephone Company (Centel) and United Telephone Companies (United) (together, United)
12. US West Communications, Inc. (US West)

DA 94-143

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Expanded Interconnection with	)	
Local Telephone Company Facilities	)	CC Docket No. 91-141
	)	Transport Phase I
Petitions for Exemption from	)	
Physical Collocation Requirement	)	
for Interstate Switched Transport	)	
	)	
	)	

MEMORANDUM OPINION AND ORDER

Adopted: February 10, 1994; Released: February 14, 1994

By the Acting Chief, Common Carrier Bureau:

I. INTRODUCTION

1. In the Switched Transport Expanded Interconnection Order, the Commission required most Tier 1 local exchange carriers (LECs) to provide expanded interconnection for interstate switched transport service to all interested parties that wish to terminate their own switched transport transmission facilities at particular LEC premises.[1] The designated LECs must offer all such interested parties physical collocation of equipment necessary for interconnection in LEC central offices.[2] The Commission did not extend this requirement to any central office already exempt from the requirement to provide physical collocation for expanded interconnection for interstate special access.[3] The Commission also contemplated exempting additional offices from the physical collocation requirement if those offices lacked adequate space for physical collocation.[4] For those locations, LECs must file tariffs for virtual

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[1] Expanded Interconnection with Local Telephone Company Facilities, Second Report and Order and Third Notice of Proposed Rulemaking, CC Docket No. 91-141 Transport Phase I, 8 FCC 7374, 7402 (1993) (Switched Transport Expanded Interconnection Order).

[2] Id. at 7391.

[3] Id. at 7394. See also Expanded Interconnection with Local Telephone Company Facilities, Petitions for Exemption from Physical Collocation Requirement, CC Docket No. 91-141, 8 FCC Rcd 4569 (Com.Car.Bur. 1993) (Special Access Exemption Order), app. for rev. pending.

[4] Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7393-94. LECs were not given a second opportunity to qualify for the state exemption. Id.

collocation for switched transport expanded interconnection.[5]

2. LECs seeking exemption from this physical collocation requirement were required to file petitions for exemption by November 18, 1993, the same time they filed tariffs for switched transport expanded interconnection.[6] Four LECs filed such petitions for central offices for which they had not sought a similar exemption for special access. These LECs are BellSouth Telecommunications, Inc. (BellSouth), GTE Service Corporation (GTE), Southern New England Telephone Company (SNET), and Southwestern Bell Telephone Company (Southwestern Bell). Teleport Communications Group (TCG) filed an opposition to these petitions, and BellSouth, GTE, Southwestern Bell, and SNET filed replies. For reasons discussed below, we grant these petitions in part.

II. PLEADINGS

A. BellSouth

3. Bellsouth seeks exemption for three central offices.[7] At its Garden central office in West Palm Beach, Florida, BellSouth alleges that 2300 square feet of office space are unavailable for physical collocation because this space is used for entrance and bathroom facilities and a mechanical room containing heating, ventilation, and air conditioning (HVAC) equipment.[8] BellSouth also has reserved 2100 square feet within that office for projected growth.[9] In its reply, BellSouth states that 600 of this 2100 square feet are needed for three years of growth for a DMS 200 access tandem switch and a DMS 100 switch to provide local switching.[10] BellSouth asserts that another 600 square feet are needed for a DMS 200, a TOPS operator switch, and a DMS signal transfer point (STP).[11] Finally, BellSouth claims that the remaining 900 square feet must be reserved for main distribution frame growth and maintenance administration.[12]

4. TCG doubts that, of the 4400 square feet that BellSouth states are either unavailable or reserved for future use, it could not find at least 100 square feet to make available for

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[5] Id. The Commission delegated authority to the Bureau to act upon certain implementation details pertaining to expanded interconnection for switched transport. Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7450.

[6] Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7443.

[7] BellSouth Petition at 2-3 and Exh. 1. These central offices are listed in Appendix A of this Order.

[8] Id.

[9] Id.

[10] BellSouth Reply at 3.

[11] Id.

[12] Id.

physical collocation.[13] TCG also implies that BellSouth's representations should not be believed because BellSouth has made an excessive number of exemption requests in the past.[14] BellSouth contends that the Common Carrier Bureau (Bureau) in the past has found that each exemption request should be judged on its own merits, independent of that LEC's requests at other locations.[15]

5. At its Royal Palm central office in West Palm Beach, Florida, BellSouth alleges that 964 square feet are unavailable for physical collocation because this space is used for entrance and bathroom facilities, an equipment receiving room, and a mechanical room containing HVAC equipment.[16] BellSouth plans construction to enlarge this central office, and expects physical collocation to be available in the first quarter of 1995.[17] TCG asserts that BellSouth has not justified exemption at the Royal Palm Beach central office, and in any case BellSouth would not be entitled to an exemption after March 31, 1995, when BellSouth states that physical collocation will be available at this central office.[18] BellSouth replies that TCG has not refuted its showing of space inadequacy, and states that it would not be opposed to limiting its exemption to March 31, 1995.[19]

6. In its Jupiter, Florida, central office, BellSouth claims that 2400 square feet are unavailable for physical collocation because it is used for hallways, entrance and bathroom facilities, and a mechanical room containing HVAC equipment.[20] BellSouth also contends that 1200 square feet are used for equipment storage and an employee break room. BellSouth has reserved 2160 square feet for growth through 1998. In addition, BellSouth asserts that 1800 square feet at this central office are unusable for any purpose because the floor has insufficient load bearing capacity.[21] TCG argues that BellSouth has not shown that 1200 square feet are necessary for storage and an employee break room in Jupiter.[22] TCG also maintains that BellSouth has not disclosed the load-bearing capacity of the 1800 square foot space in the Jupiter central office, and that it has not shown that this space could not be used for storage or

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[13] TCG Opposition at 2-3.

[14] Id. at 3.

[15] BellSouth Reply at 3-4, citing Expanded Interconnection with Local Telephone Company Facilities CC Docket No. 91-141, GTE Service Corporation Petition for Exemption from Physical Collocation Requirement, DA 93-1529 (released December 21, 1993) (granting GTE a petition for exemption from the special access expanded interconnection physical collocation requirement at a central office in San Bernardino, California).

[16] BellSouth Petition at 2-3.

[17] Id.

[18] TCG Opposition at 2 n.3.

[19] BellSouth Reply at 2-3.

[20] BellSouth Petition at 2-3.

[21] Id. at 3.

[22] TCG Opposition at 2.

an employee break room, even if it is not adequate for collocated equipment.[23] In response to TCG's opposition, BellSouth reexamined its Jupiter central office and determined that its storage and employee break room areas could be placed in the 1800 square feet with insufficient load bearing capacity for collocation cited by TCG. Therefore, BellSouth withdrew its petition for exemption with regard to this central office.[24]

B. GTE

7. GTE seeks exemption for nine central offices.[25] GTE asserts that there is no available floor space in any of these central offices suitable for housing switching equipment.[26] GTE also explains that it has reserved space for its own use in these offices based on five-year growth projections.[27] TCG asserts that GTE has not provided sufficient information for the Commission to determine whether GTE is reserving an excessive amount of space for future use.[28] TCG also alleges that GTE has sought exemptions for an excessive number of central offices in the past.[29] GTE replies that it used the same methodology to justify its exemption request as it has in the past, and that the Bureau has granted GTE's exemption requests.[30] GTE also provides data on vacant floor space and growth projections for each central office for which it seeks exemption. GTE claims there is no vacant space available except at two of these nine central offices.[31] It also asserts that the proportion of central offices for which it has sought exemption in the past is similar to those of other companies.[32]

8. GTE also seeks waiver of the virtual collocation tariffing requirement at Logansport, Indiana and Westport, Washington. GTE contends that there is insufficient conduit space to provide virtual collocation at these offices, and does not plan to install additional conduit because these offices already have sufficient capacity to support expected demand growth.[33] GTE estimates that installing the conduit necessary to provide collocation could cost as much

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[23] Id.

[24] BellSouth Reply at 1-2.

[25] GTE Petition at 1-2. These central offices are listed in Appendix A of this Order.

[26] Id. at 2.

[27] Id. at 2-3.

[28] TCG Opposition at 5.

[29] Id.

[30] GTE Reply at 2-3.

[31] Id. at Att. 2. Specifically, at Wentsville, Missouri, GTE asserts there are 57 square feet available; it projects that 72 square feet will be necessary for future growth. At Westport, Washington, GTE maintains there are 50 square feet available, and it projects that 30 square feet will be necessary for future growth.

[32] Id. at 3-4.

[33] GTE Petition at 3.

as $125,000 at each location.[34] TCG asserts that GTE has not adequately shown that it cannot pull any additional fiber through any existing conduit. TCG also claims that GTE may be attempting to avoid providing physical collocation by filling ducts with dark fiber.[35] If that is the case, TCG suggests requiring GTE to lease this dark fiber capacity to customers ordering physical collocation.[36]

9. In its reply, GTE states that there is room only for projected growth in local and access lines in the conduits of its Logansport and Westport central offices, and repeats that there is not sufficient space to provide expanded interconnection.[37] According to GTE, the Logansport wire center has 20 multi-tile ducts leaving the wire center, and 27 cable sheaths fully occupy these ducts.[38] GTE also contends that 11 cables terminate in the Westport wire center.[39] GTE contends that pulling another cable through any of those conduits would damage either the new or existing cable in that conduit.[40] It also denies that it has filled its existing conduit with dark fiber at these two locations, and argues that it has never been required to provide dark fiber service in the past.[41] Furthermore, GTE denies that there have been any bona fide requests for expanded interconnection service at either of these central offices.[42] Finally, GTE states that it will work with a customer requesting interconnection at either of these central offices to find some alternative, such as routing to another wire center, or bringing in wire through the central office floor.[43]

C. Southwestern Bell

10. Southwestern Bell seeks exemption from the physical collocation requirement and waiver of the virtual collocation requirement at three central offices.[44] Southwestern Bell explains that the buildings which house the offices are owned by American Telephone and Telegraph Company (AT&T), and Southwestern Bell leases some space in these buildings pursuant to a divestiture agreement.[45] It contends that it has no switching equipment at these

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[34] Id. at 3-4.

[35] TCG Opposition at 5-6.

[36] Id. at 6.

[37] GTE Reply at 4.

[38] GTE Reply at 4.

[39] Id. at 5.

[40] Id. at 4-5.

[41] Id. at 5.

[42] Id. at 5-6.

[43] Id. at 5.

[44] Southwestern Bell Petition at 1-2. These central offices are listed in Appendix A.

[45] Id. at 2.

locations, and that it leases power from AT&T at the Dallas and Houston central offices.[46] Southwestern Bell argues that it has no control over AT&T's floor space.[47] Finally, it asserts that it was granted an exemption from the physical and virtual collocation requirements in another central office for interstate special access on similar grounds.[48]

11. TCG argues that Southwestern Bell has not shown that it made a good faith effort to obtain permission to provide physical collocation in its leased space.[49] It also argues that because Southwestern Bell has identified these three central offices as locations where switched access service is available, it doubts Southwestern Bell's contention that there is no switching equipment in these central offices.[50] Southwestern Bell repeats that it owns none of the switching equipment at these three locations.[51] Southwestern Bell states that it does not know on what basis TCG assumes it provides switched access service from these locations, but speculates that TCG might have been referring to Bell Communication Research's (Bellcore's) Local Exchange Routing Guide, which lists these three central offices as providing operator services. Southwestern Bell explains that AT&T provides these operator services, and Bellcore assigned AT&T its operating company number for these offices rather than assigning AT&T its own number because AT&T is not an operating company.[52] Southwestern Bell also repeats that it was granted an exemption from the physical and virtual collocation requirements for interstate special access on similar grounds.[53]

D. SNET

12. SNET seeks exemption from the physical collocation requirement at one central office in Jewett City, Connecticut.[54] It also claims that its Jewett City central office has no usable space other than space currently in use or reserved for future use.[55] In its reply, SNET states that its Jewett City central office has a total of 3208 square feet, of which 2900 square feet are used to house 5ESS switching equipment, and the remainder are used for two bathrooms and two desks for computer terminal equipment and printers.[56] TCG contends that

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[46] Id. Southwestern Bell states that it has only transmission equipment at these central offices.

[47] Id.

[48] Id. at 2-3. See Special Access Exemption Order, 8 FCC Rcd at 4573.

[49] TCG Opposition 3.

[50] Id. at 3-4.

[51] Southwestern Bell Reply at 2.

[52] Id. at 2-3.

[53] Id. at 3.

[54] SNET Petition at 2.

[55] Id. at 2-3.

[56] SNET Reply at 3.

SNET's claim of no available space is unpersuasive because its petition did not provide data on total floor space, space used for equipment and for other purposes, space held for future use, and the basis for forecasts of future use needs.[57]

III. DISCUSSION

A. Physical Collocation

13. The Special Access Expanded Interconnection Order permitted LECs to seek exemption from the physical collocation requirement for special access expanded interconnection at specified central offices if they could make a factual showing that a specific central office lacked sufficient space to permit physical collocation.[58] The factual showing standard adopted for exemptions from the physical collocation requirement for special access expanded interconnection also applies to exemptions from the physical collocation requirement for switched transport expanded interconnection.

14. In general, the LECs provide, either in their petitions or their replies to oppositions, charts specifically listing the central offices for which they seek exemption based on lack of space, the area in square feet of each office, and the amount of area currently occupied by LEC equipment or reserved for future use.[59] These are substantially similar to the showings made by LECs in the Special Access Exemption Order, which we determined were adequate to satisfy the factual showing requirement.[60] Here the LECs have made adequate factual showings to warrant exemptions from the physical collocation requirement for switched transport expanded interconnection. Accordingly, we hereby grant all the petitions for exemption from the physical collocation requirement for switched transport expanded interconnection requested by GTE and SNET, and BellSouth's request with respect to the Garden central office in Palm Beach, Florida.

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[57] TCG Opposition at 4-5. SNET asserts that a central office must have a minimum of 400 square feet available to provide physical collocation for interstate switched transport. SNET Petition at 2. TCG maintains that SNET's 400 square foot requirement is comparable to BellSouth's proposal to provide physical collocation for special access expanded interconnection only at central offices with a minimum of 300 square feet available. TCG asserts that BellSouth withdrew that proposal because it was opposed. TCG Opposition at 4, citing Special Access Expanded Interconnection Order, 8 FCC Rcd at 4574 n.79. TCG maintains that such a minimum space requirement is inconsistent with the Commission's "first come, first serve" policy. TCG Opposition at 4. On February 7, 1994, SNET filed an ex parte statement explaining that its 400 square foot standard is not a minimum for physical collocation, but an internal engineering and planning guideline used to identify central offices demanding more thorough examination. SNET's expanded interconnection tariff does not mention a 400 square foot minimum requirement, and in fact makes collocation space available in 100 square foot increments. See SNET Tariff F.C.C. No. 39, Section 18.6(C), 1st Revised Page 18-15. Therefore, we do not reach the issue of whether it is reasonable or appropriate to base petitions for exemption on a 400 square foot minimum requirement.

[58] Special Access Expanded Interconnection Order, 7 FCC Rcd at 7390-91, 7407-08 n.190.

[59] BellSouth Petition at 2-3 and Exh. 1; GTE Reply at Att. 2; SNET Reply at 3.

[60] Special Access Exemption Order, 8 FCC Rcd at 4570-71.

15. BellSouth has withdrawn its petition for exemption for its central office in Jupiter. Accordingly, BellSouth's petition is dismissed as moot with respect to this office, and BellSouth is required to file tariffs for physical collocation for switched transport expanded interconnection as specified in the Switched Transport Expanded Interconnection Order.[61] Furthermore, with respect to its Royal Palm central office in Palm Beach, Florida, BellSouth states that physical collocation will become available in the first quarter of 1995. Thus, BellSouth has provided no justification for exemption after March 31, 1995. Accordingly, this central office is exempted from the physical collocation requirement for switched transport expanded interconnection only until March 31, 1995.

B. Virtual Collocation

16. In addition to the exemption from the physical collocation requirement discussed above, GTE seeks waivers of the virtual collocation requirement at two central offices, and Southwestern Bell seeks similar waivers at three central offices. Carriers must show "good cause" for these waivers within the meaning of Section 1.3 of the Communications Act.[62] In these cases, both Southwestern Bell and GTE have shown good cause for waiver of the Commission's virtual collocation requirement for the same reasons stated in that Order.

17. In the Special Access Exemption Order, the Bureau granted Southwestern Bell a waiver of the virtual collocation requirement for certain central offices which it shares with AT&T pursuant to divestiture agreements.[63] The Southwestern Bell waiver request before us now is substantially similar to the one we granted in the Special Access Exemption Order. Accordingly, we grant Southwestern Bell's waiver in these limited circumstances.

18. In its virtual collocation waiver request, GTE has made a showing similar to that made by US West Communications, Inc. (US West). We granted US West a waiver of the virtual collocation requirement for a central office in Pocatello, Idaho, where US West showed that it had no space available in its conduit to provide virtual collocation.[64] Accordingly, we conclude that GTE has shown good cause for waiver at both its Logansport and Westport central offices.

19. However, we granted US West waiver of the virtual collocation requirement only for a limited time.[65] GTE has not provided good cause for a permanent waiver of this requirement. Nevertheless, GTE states that it has not yet received a request for service in these offices, which appear on the list of central offices interconnectors have identified as likely candidates for collocation. Therefore, now is not yet the time to decide this issue on a permanent basis. Accordingly, GTE's waiver of the virtual collocation requirement at each of these two central offices will expire 90 days after it has received a bona fide request for collocation at those central offices.

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[61] Switched Transport Expanded Interconnection Order, 8 FCC Rcd at 7443-44.

[62] Special Access Exemption Order, 8 FCC Rcd at 4573.

[63] Id.

[64] Id.

[65] US West's waiver was granted on June 9, 1993, and will expire on October 1, 1994. Special Access Exemption Order, 8 FCC Rcd at 4573.

IV. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED that the petitions for exemption filed by BellSouth Telecommunications, Inc.; GTE Service Corporation; Southwestern Bell Telephone Company; and Southern New England Telephone Company ARE GRANTED to the extent indicated above, and otherwise ARE DISMISSED AS MOOT.

21. IT IS FURTHER ORDERED that, pursuant to Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, Southwestern Bell Telephone Company and GTE Service Corporation ARE GRANTED waiver of the Commission's virtual collocation requirement to the extent indicated above.

22. IT IS FURTHER ORDERED that BellSouth Telecommunications, Inc. SHALL FILE, within 14 days of the release date of this Order, physical collocation tariffs for switched transport expanded interconnection to become effective on 15 days' notice, for its central office in Jupiter, Florida.

23. For these purposes, we waive Sections 61.58 and 61.59 of the Commission's Rules, 47 C.F.R. §§ 61.58, 61.59. BellSouth Telecommunications, Inc., should cite the "DA" number of this Order as the authority for this filing.

FEDERAL COMMUNICATIONS COMMISSION

Kathleen B. Levitz

Kathleen B. Levitz
Acting Chief
Common Carrier Bureau

APPENDIX A

CENTRAL OFFICES FOR WHICH LECS SEEK EXEMPTION FROM THE PHYSICAL COLLOCATION REQUIREMENT FOR SWITCHED TRANSPORT EXPANDED INTERCONNECTION

I. BellSouth

1. JPTRFLMA Jupiter, Florida
2. WPBHFLGR West Palm Beach, Florida, Garden Central Office
3. WPBHFLRP West Palm Beach, Florida, Royal Palm Central Office

II. GTE

1. Show Low, Arizona
2. Long Beach Access Tandem, California
3. Logansport, Indiana *
4. Wentzville, Missouri
5. Cash, Texas
6. Dickenson, Texas
7. Lyden, Washington
8. Mount Vernon, Washington
9. Westport, Washington *

III. Southwestern Bell

1. DLLSTXTL Dallas, Texas *
2. HSTNTX01 Houston, Texas *
3. STLSMO09 St. Louis, Missouri *

IV. SNET

1. JWCYCT00 Jewett City, Connecticut

* Carrier seeks exemption from both physical and virtual collocation at this central office.

In re Applications of	)	
	)	
	)	
EAGLE RADIO, INC.	)	
	)	
For Renewal of License of	)	BRH-900402ZG
Station KEGL(FM)	)	
Fort Worth, Texas	)	
	)	
	)	
DENNIS ELAM, TRUSTEE FOR BAKCOR BROADCASTING, INC., DEBTOR	)	
	)	
For Renewal of Licenses of	)	BR-900330VY
Stations KMND/KNFM(FM)	)	BRH-900330WF
Midland, Texas	)	
	)	
	)	
KTEM RADIO, INC.	)	
	)	
For Renewal of Licenses of	)	BR-900320UM
Stations KTEM/KPLE(FM)	)	BRH-900320UN
Temple, Texas	)	
	)	
	)	
WALKER COUNTY COMMUNICATIONS, INC.	)	
	)	
For Renewal of Licenses of	)	BR-900327VJ
Stations KSAM/KSAM-FM[1]	)	BRH-900327VI
Huntsville, Texas	)	
	)	
	)	
RADIO SUNGROUP OF TEXAS, INC.	)	
	)	
For Renewal of License of	)	BRH-900327UR
Station KYKX(FM)	)	
Longview, Texas	)	

[1] KSAM-FM's call sign was changed from KHUN(FM) effective December 6, 1991.

MEMORANDUM OPINION & ORDER
AND NOTICES OF APPARENT LIABILITY

Adopted: January 31, 1994 **Released:** February 1, 1994

By the Commission:

I. INTRODUCTION

1. The Commission has before it for consideration: (i) license renewal applications from the above-listed radio stations in Texas; (ii) a Petition to Deny timely filed by the Texas State Conference of Branches of the NAACP, its various chapters in the stations' service areas (collectively "NAACP") and the National Black Media Coalition[2] (NAACP/NBMC) against the above-listed stations;[3] (iii) oppositions filed by the licensees; (iv) the licensees' responses to staff letters of inquiry; (v) a Joint Request for Approval of Settlement Agreement filed by the NAACP and the licensee of Stations KMND/KNFM(FM); (vi) a Joint Request for Approval of Settlement Agreement filed by the NAACP and the licensee of Stations KTEM/KPLE(FM); and (vii) a Joint Request for Withdrawal of Petition to Deny filed by the NAACP and the licensee of Stations KSAM/KSAM-FM.

II. BACKGROUND

2. NAACP/NBMC allege that the challenged stations violated our Equal Employment Opportunity (EEO) Rule and policies. Accordingly, they request that we conduct an investigation of the employment practices of the stations pursuant to Bilingual Bicultural Coalition on Mass Media, Inc. v. FCC, 595 F.2d 621 (D.C. Cir. 1978) (Bilingual) and designate the renewal

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[2] The National Black Media Coalition is challenging the renewal application of only Station KEGL(FM).

[3] NAACP also challenged the renewal applications for Stations KBIL/KBIL-FM in San Angelo; KGNC/KMLT(FM) in Amarillo; KEBE/KOOI(FM) in Jacksonville; and KGVL/KIKT(FM) in Greenville. NAACP and NBMC also challenged KNUZ/KQUE(FM) in Houston, Texas. The Commission terminated Station KBIL(AM)'s authority to operate and deleted its call sign by letter dated June 10, 1992. Station KBIL-FM's renewal and assignment applications were granted subject to EEO reporting as well as non EEO-related conditions. See Application for License Renewal of Station KBIL-FM San Angelo, Texas, 7 FCC Rcd 5292 (1992). The EEO records of the other stations will be reviewed in a separate order.

applications for hearing.

III. PLEADINGS

3. Settlement Agreements. On February 9, 1993, the NAACP and the licensee of Stations KMND/KNFM(FM) filed a Joint Request for Approval of Settlement Agreement which, the parties state, resolves all allegations raised in the petition to deny. We have reviewed the settlement agreement pursuant to 47 C.F.R. Section 73.3588 and Formulation of Policies and Rules Relating to Broadcast Renewal Applicants, Competing Applicants and Other Participants to the Comparative Renewal Process and to the Prevention of Abuses of the Renewal Process, 4 FCC Rcd 4780 (1989) (Renewal Policies Order). We find that the settlement agreement complies with the Commission's rules and policies and, therefore, the petition is dismissed. As is our practice in all cases, we reviewed the stations' Equal Employment Opportunity (EEO) Program and performance pursuant to Section 309 of the Communications Act of 1934, as amended, 47 U.S.C. § 309. We find that the licensee did not engage in affirmative recruitment efforts for a substantial number of vacancies and failed to maintain adequate records for self-assessment. We will, therefore, grant renewal subject to appropriate remedies and sanctions as discussed below.

4. In addition, on January 25, 1991, NAACP and the licensee of Stations KTEM/KPLE(FM) filed a Joint Request for Approval of Settlement Agreement which the parties state resolves all allegations raised in the petition to deny. We have reviewed the settlement agreement pursuant to 47 C.F.R. § 73.3588 and Renewal Policies Order, supra and find that the settlement agreement complies with the Commission's rules and policies. Accordingly, the petition is dismissed. As is our practice in all cases, we reviewed the stations' Equal Employment Opportunity (EEO) Program and performance pursuant to 47 U.S.C. § 309. We find that the licensee did not engage in affirmative recruitment efforts for a substantial number of vacancies and failed to maintain adequate records for self-assessment. We will, therefore, grant renewal subject to appropriate remedies and sanctions as discussed below.

5. KSAM/KSAM-FM Withdrawal of Petition. On August 3, 1990, NAACP and the licensee of Stations KSAM/KSAM-FM filed a Joint Request for Withdrawal of Petition to Deny. The parties indicate that there is no settlement agreement and both have submitted properly sworn declarations of no consideration pursuant to 47 C.F.R. § 73.3588 and Renewal Policies Order, supra. We find that NAACP's request for withdrawal complies with the Commission's rules and policies and, therefore, the petition is dismissed. Nonetheless, as is our practice in all cases, we reviewed the stations' EEO Program and performance pursuant to 47 U.S.C. § 309 and found that the licensee did not make sufficient efforts to recruit minorities and did not self-assess its program.

Accordingly, we will grant renewal subject to appropriate remedies and sanctions as discussed below.

6. Standing. In challenging an application pursuant to Section 309(d)(1) of the Communications Act, a petitioner must demonstrate party in interest status. In addition, a petitioner must, as a threshold matter, submit "specific allegations of fact sufficient to show that a grant of the application would be prima facie inconsistent with [the public interest, convenience and necessity]." 47 U.S.C. § 309(d)(1). See also Astroline Communications Co. Ltd. Partnership v. FCC, 857 F.2d 1556 (D.C. Cir. 1988) (Astroline); Application of Dubuque T.V. Limited Partnership and Sage Broadcasting Corporation of Dubuque, Iowa for Assignment of Television License for KDUB-TV, Dubuque, Iowa, 4 FCC Rcd 1999 (1989). The allegations, except for those of which official notice may be taken, must be supported by the affidavit of a person with personal knowledge of the facts alleged. 47 U.S.C. § 309(d)(1).

7. NAACP timely submitted declarations under penalty of perjury from the Presidents of the Fort Worth Branch regarding KEGL(FM) and the Longview Branch regarding KYKX(FM). Both declarations are from listeners of the respective stations. They comply with the requirement for establishing standing for the designated branch and the Texas State Conference of Branches of the NAACP. See American Legal Foundation v. FCC, 808 F.2d 84 (D.C. Cir. 1987). We find, therefore, that the challenge filed by NAACP constitutes a valid petition to deny against stations KEGL(FM) and KYKX(FM).

8. Finally, regarding Station KEGL(FM), the pleading contained a statement under penalty of perjury from the Chairman of NBMC, a resident of the Washington, D.C. area. He does not claim to be a listener of the station, but states that NBMC members are listeners. NBMC does not provide an affidavit from a local resident as is required for an organization seeking standing as a party in interest. See Application of Certain Broadcast Stations Serving Communities in the State of Louisiana, 7 FCC Rcd 1503 (1991); Standing of a Party to Petition to Deny, 82 FCC 2d 89, 98 (1980). Therefore, we will treat NBMC's challenge as an informal objection. See 47 C.F.R. § 73.3587.

IV. DISCUSSION

9. Prima Facie Case. NAACP/NBMC derived their factual allegations from the licensees' EEO programs and annual employment reports. Review of each licensee's EEO record led us initially to conclude that NAACP/NBMC presented a prima facie case demonstrating that unconditional grant of the renewal applications would have been inconsistent with the public interest. See Section 309(d)(1) of the Communications Act, 47

U.S.C. § 309(d)(1); Astroline, supra.[4] Further inquiry was therefore necessary. See Beaumont Branch of the NAACP and the National Black Media Coalition v. FCC, 854 F.2d 501, 506 (D.C. Cir. 1988) (Beaumont); Bilingual, supra.

10. However, subsequent review of NAACP/NBMC's EEO allegations, as well as each licensee's renewal application, opposition and inquiry responses, leads us to conclude that there are no substantial and material questions of fact warranting designation for hearing. In addition, we find no evidence of employment discrimination. Thus, grant of each application will serve the public interest. 47 U.S.C. § 309(d)(2). Astroline, supra. Accordingly, we will grant renewal, but with appropriate remedies and sanctions. All forfeiture sanctions imposed herein will be based on the guidelines for forfeitures pertaining to EEO violations adopted in Policy Statement, FCC# 94-27 (Adopted January 31, 1994).

11. Section 73.2080 of the Commission's Rules requires that a broadcast licensee refrain from employment discrimination and establish and maintain an affirmative action program reflecting positive and continuing efforts to recruit, employ and promote qualified women and minorities. When evaluating EEO performance, the Commission focuses on the licensee's efforts to recruit, employ and promote qualified women and minorities and the licensee's ongoing assessment of its EEO efforts. Such an assessment enables the licensee to take corrective action if qualified women and minorities are not present in the applicant pool. The Commission also focuses on any evidence of discrimination by the licensee. See Sections 73.2080(b) and (c) of the Commission's Rules, 47 C.F.R Sections 73.2080(b), 73.2080(c).

12. When a renewal application indicates an absence of discrimination and a record of adequate EEO efforts, the application is granted, if otherwise appropriate. When it fails to evidence a record of adequate EEO efforts, the Commission may impose a variety of remedies or sanctions, such as reporting conditions, renewal for less than a full term, forfeiture, or a combination thereof. Further, the Commission will designate the application for hearing if the facts so warrant. Amendment of Part 73 of the Commission's Rules Concerning Equal Employment Opportunity in the Broadcast Radio and Television Services, 2 FCC Rcd 3967 (1987), petition for reconsideration pending; see also 4 FCC Rcd 1715 (1989) (request for clarification by National Association of Broadcasters). See e.g., Beaumont, supra; Bilingual, supra.

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[4] As is our practice in all cases, we reviewed the licensees' EEO efforts toward both women and minorities. We find each licensee's record of recruiting women sufficient.

KEGL(FM), Fort Worth

13. The station's 1990 EEO Program Report, opposition and inquiry responses[5] reveal that from February 28, 1987, to July 31, 1990, the licensee filled 47 full-time vacancies,[6] including 34 for upper-level positions.[7] In a revised list of minority referrals contained in its opposition to NAACP/NBMC's petition, the licensee states that it received minority referrals from Daily Post (one); Dallas Morning News (five); Dallas Times Herald (six); Dallas Post Tribune, a minority publication (two); Radio & Records (seven); Texas Christian University (one); internships (three); industry contacts (13); and employee referrals (two). However, it is unclear how many of these referrals were for full-time positions and to what extent these sources were used. The licensee also lists the following minority-oriented sources: College Hispanic American Students at Southern Methodist University, NAACP, Dallas Black Chamber of Commerce, Dallas Urban League, North Dallas Community News and the Fort Worth Hispanic Womens Network of Texas. However, it is similarly unclear to what extent these sources were contacted to fill the station's 47 vacancies.

14. The licensee could not provide the following documentation

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[5] In response to our first inquiry dated July 20, 1990, the licensee filed an "Objection to the Bilingual Letter" on the grounds that Commission staff improperly sent the letter before the deadline for the licensee to file its opposition to NAACP's petition to deny. We reject the licensee's objection. Staff letters of inquiry such as the instant staff letter are based on Commission review of renewal information and are not limited by or dependant on the filing of a petition to deny.

[6] Included in the 47 full-time hires are three Hispanic interns who were subsequently offered full-time employment and two Blacks who were offered, and declined, upper-level job offers during the license term.

[7] The licensee also submits job hire information for positions filled after the license term expired from August 1, 1990, to August 1, 1991. Post-term EEO performance is not considered in the Commission's evaluation of a licensee's EEO record during a license term if that record, standing alone, is so deficient that it would merit denial of renewal or other sanctions. See Rust Communications, Inc., 73 FCC 2d 39, 53 (1979). Here, we will not consider the licensee's post-term hires because, as we state, infra, we find that the licensee's EEO record during the license term warrants a sanction.

for its 47 vacancies:[8] the recruitment sources contacted for each position; the number, gender and race or national origin of those who applied for each position; and the number, gender and race or national origin of those who were interviewed for each position. It is, therefore, unclear to what extent the licensee formally recruited for its vacancies[9] and attracted minorities into the applicant and interview pools. However, in its opposition, the licensee states that it received 10 minorities among 110 applicants for a retail marketing manager position and that it offered a sales position to a Black female applicant and an on-air position to a Black male applicant. The licensee provides the referral source, gender and race or national origin of each successful applicant. In this regard, successful applicants came from: Radio & Records (nine); Dallas Morning News (six, including one Hispanic); AWRT (seven); Dallas Times Herald (three, including one Black); a referral from an industrial contact at an urban-format radio station (one Black); employee referrals (15, including one Hispanic); interns from local schools (three Hispanics); program director of Dallas radio station (one Black); general manager (one Black); and a re-hire (one Black). Thus, 30 of the 47 successful candidates were referred by outside recruitment sources. Notwithstanding the licensee's inadequate record-keeping, it appears that KEGL(FM)

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[8] The licensee states that "it was unfamiliar with the Commission's requirement that licensees formally document referrals ..." and that "[] management erroneously believed that Texas law forbade the asking of any questions with regard to a job applicant's race or sex." This argument lacks merit as we have required licensees to maintain adequate records of source referral and applicant pool data since 1976. See Amendment of Part 73 of the Commission's Rules Concerning Equal Employment Opportunity in the Broadcast Radio & Television Services, 4 FCC Rcd 1715, 1716 (1989).

[9] Although station personnel state in their declarations that they used minority sources, most do not specifically indicate when or for what positions these sources were contacted. The Program Director indicates that he has had some success with the Dallas Post Tribune, a minority publication, but only discusses one position, midday announcer, for which the source was apparently contacted. The Business Manager states that, "[t]he station's policy and practice is and was to send letter[s] to local minority organizations seeking referrals every time a job opening occurred" and that she "personally instructed that they be sent out at numerous occasions in the course and scope of my employment as business manager." We find that it is unclear to what extent this "policy and practice" was followed. The licensee acknowledges that it kept no records of these alleged contacts. Moreover, the Business Manager does not claim to have any personal knowledge that letters were actually sent for any vacancy.

attracted minorities to 11 (23%) of the 47 applicant and interview pools, including five (15%) of the 34 upper-level pools. The licensee hired ten minorities (five Blacks, five Hispanics), including four minorities (three Blacks, one Hispanic) for upper-level positions.[10] In its renewal application, the licensee notes that it also participates in an internship program. In addition, it states that as of March 29, 1990, the number of minority employees was at 50% of parity with the number of minorities in the Fort Worth, Texas, labor force.[11]

15. NAACP/NBMC argue that the station has not complied with our EEO Rule. They note that several recruitment sources listed in the renewal application produced no minority applicants, which, they argue, suggests insufficient contact with these sources. Moreover, they note that only eight minorities applied for positions as a result of newspaper ads while 90 women applied from newspaper ads. NAACP/NBMC deduce that if women comprised half of the applicants responding to newspaper ads, then the job

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[10] The Ft. Worth-Arlington, TX MSA, in which the station is located, has a 17.0% minority labor force (9.2% Black, 6.6% Hispanic, 0.7% Asian/Pacific Islander, 0.5% American Indian). The 1984 Annual Employment Report lists two Blacks (5.9%) and one Hispanic (2.9%) among 34 full-time employees, including two Blacks (6.5%) and one Hispanic (3.2%) among 31 upper-level job employees. In the 1985 report, three Blacks (9.4%) and two Hispanics (5.9%) are listed among 32 full-time employees, including two Blacks (7.1%) and two Hispanics (7.1%) among 28 upper-level job employees. The 1986 report lists two Blacks (6.1%) and one Hispanic (3.0%) among 33 full-time employees, including two Blacks (6.9%) and one Hispanic (3.4%) among 29 upper-level job employees. In the 1987 report, one Black is listed among 34 full-time employees (2.9%) and 29 upper-level job employees (3.4%). The 1988 report lists two Blacks (6.9%) and one Hispanic (3.4%) among 29 full-time employees, including one Black (4.2%) and one Hispanic (4.2%) among 24 upper-level job employees. In the 1989 report, two Blacks (6.1%) and three Hispanics (9.1%) are listed among 33 full-time employees, including one Black (3.8%) and one Hispanic (3.8%) among 26 upper-level job employees. The 1990 report lists two Blacks (5.6%) and two Hispanics (5.6%) among 36 full-time employees, including one Black (3.4%) and one Hispanic (3.4%) among 29 upper-level job employees.

One Hispanic hired during the three year period apparently remained with the station for two weeks, not long enough to appear on any annual employment report.

[11] We remind the licensee that our processing guidelines are not a safe harbor. See Catawba Valley Broadcasting Company, Inc., 3 FCC Rcd 1913 (1988).

pool from which these eight minorities were drawn was composed of approximately 180 applicants. Finally, they criticize the licensee's failure to hire no more than one minority for 14 overall positions and no minorities for seven upper-level positions reportedly filled during the reporting year.

16. In opposition, the licensee states that NAACP/NBMC's allegations are incorrect because the labor force statistics used by NAACP/NBMC are not those used by the Commission,[12] and that the station's policy has been to actively recruit and hire minorities. Although it has had only limited success with "more conventional" minority recruitment sources, the licensee claims that station personnel have successfully cultivated minority referrals from industry contacts. In addition, it notes that while it has not maintained formalized documentation of its EEO efforts, it has continuously evaluated those sources, replacing those which prove unproductive. The licensee acknowledges that it faced a temporary departure from its "aggressive" minority recruitment in 1987 but explains that this departure was due to multiple changes in management at the station and within the licensee's parent company. Nonetheless, it notes that with the arrival of a new general manager, its aggressive EEO program once again took top priority.

17. There are no substantial and material questions of fact warranting designation for hearing. Astroline, supra. The licensee engaged in some recruitment and hired and employed Blacks and Hispanics. We find no evidence of employment discrimination. Accordingly, grant of the station's renewal is warranted.

18. However, the licensee's recruitment efforts were deficient because it failed to recruit so as to attract an adequate pool of minority applicants for at least 66% (31 jobs) of its 47 full-time positions. The Commission's requirement that licensees have ongoing EEO programs with regard to all their hiring practices is not new. Our EEO rules have been in place for over 20 years. We have repeatedly stated that licensees must engage in recruitment efforts with regard to all of their hiring vacancies. WMUS/WMUS-FM, 7 FCC Rcd 6655 (1992); Florida Renewals, 5 FCC Rcd 6738, 6739 (1990)(WPAP-FM, WCOA(AM)/WJLQ-FM); Michigan/Ohio Renewals, 3 FCC Rcd 6944 (1988). Where, as here, a substantial number of vacancies, over 66%, do not reflect meaningful recruitment efforts, appropriate sanctions are warranted. In this regard, only 11 of the 47 overall applicant and interview

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[12] In their petition, NAACP/NBMC state that the overall minority labor force for Ft. Worth, Texas is 21.7%. The 1980 Census data as used by the Commission, however, shows that the overall minority labor force of the Ft. Worth, Texas MSA is 17.0%.

pools (23%) contained minorities. Only five of the 34 upper-level applicant and interview pools (15%) contained minorities. Thus, minorities were absent from 77% of the overall pools and 85% of the upper-level pools. Notwithstanding the absence of minorities from the applicant and interview pools as noted above, it does not appear that the licensee consistently engaged in efforts to attract minorities or otherwise conducted meaningful self-assessment of its program. It appears that the licensee knows neither the number of positions recruited for nor the number of positions for which minority sources were used. Accordingly, a base forfeiture of $12,500 is warranted. See Policy Statement, supra.

19. In addition, the licensee's failure to recruit so as to attract an adequate pool of minority applicants for at least 33% of the overall and upper-level full-time positions renders its EEO efforts egregiously deficient warranting an upward forfeiture adjustment of $6,250. Similarly, the combination of the above and KEGL(FM)'s large number of hiring vacancies (47) warrants a further $6,250 upward adjustment, for a total forfeiture of $25,000. Given the number and types of deficiencies noted, a short term renewal is also warranted. See Policy Statement, supra.

20. However, we note that the licensee hired or made hiring offers to minorities equal to 50% of the minority representation in the Ft. Worth-Arlington Metropolitan Statistical Area for the period February 28, 1987, to July 31, 1990. Thus, a $6,250 downward adjustment in the forfeiture is appropriate. See Policy Statement, supra. In light of the above, we will issue a Notice of Apparent Liability for $18,750, renew the license for a short term and impose reporting conditions.

KMND/KNFM(FM), Midland[13]

21. The stations' 1990 EEO Program Report, opposition and inquiry responses indicate that there were 29 full-time vacancies, including 25 for upper-level positions from March 1, 1987, to July 31, 1990.[14] The licensee states that it received

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[13] Dennis Elam was appointed by the U.S. Bankruptcy Court on May 22, 1991, to serve as Chapter 7 Trustee for Bakcor Broadcasting, Inc., Debtor. Case Number 89-70218 RBK.

[14] The licensee also hired a Black male for a sales position on August 8, 1990, seven days after the license term expired on August 1, 1990. Because this hire occurred after the license term expired, it is a post-term hire. Under the circumstances herein, we will not consider it. See n.7, supra.

minority referrals from the Midland Reporter-Telegram (one), Midland Community College (four), Mexico Tejano Shoul/KMID-TV (one), Permian Basin Job Training Partnership (one), Hispanic Chamber of Commerce (one), Odessa American (one), walk-ins (two) and Private Industry Council (two). Station personnel state that newspapers,[15] Midland College and a local high school were contacted for clerical positions; NAB Clearinghouse and a music consultant for programming positions; and newspapers for sales positions. In addition, the licensee states that it contacted the Texas Employment Commission (TEC), Hispanic Chamber of Commerce, Black Chamber of Commerce, the Private Industry Council, (PIC) and the Black Chamber of Entrepreneurs. However, it is unclear for how many of the 29 positions these sources were contacted. Our review of the licensee's record indicates that the licensee contacted newspapers for four vacancies (two sales and two clerical); Radio & Records and "other referral sources" for one on-air position; and a high school for a clerical position. For another clerical position, the licensee contacted: TEC, Midland Hispanic Chamber of Commerce, El Editor, Midland Black Chamber of Entrepreneurs, PIC, Midland College, Odessa College, University of Texas at Permian Basin, Odessa American, Midland Reporter-Telegram, Odessa Chamber of Commerce, and Midland Chamber of Commerce. Regarding the remaining 22 vacancies, the licensee created 10 full-time positions for walk-ins applicants, including two Hispanics, and used a consultant for a program director position. For an on-air position, a candidate was hired away from another station and a resume on file was used for another vacancy. For a position filled in May 1990, the licensee acknowledges that it contacted no recruitment sources, but hired a Hispanic male "because of popularity in Midland market."

22. The licensee does not provide any recruitment information regarding the remaining eight full-time vacancies. However, successful candidates for six of the eight positions came from walk-ins (two), employee referrals (three), and a previous employee (one). The licensee did not know the referral source for the remaining two hires. Thus, it appears that the licensee contacted outside recruitment sources for only seven vacancies. Complete interview pool information was provided for only two positions. For a sales position, the licensee noted that it interviewed two minorities among 20 applicants. For a clerical position, the licensee interviewed three Hispanics among 13 applicants. Although the licensee notes that it interviewed minorities for another sales position, it does not provide a specific number of minority applicants. The licensee states that

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[15] In addition to the Midland Reporter-Telegram and the Odessa American, the licensee notes that it placed ads in the El Editor, a bilingual Spanish and English newspaper. However, it is unclear which of these newspapers were contacted for each position.

it interviewed several candidates for the Program Director position but does not mention any minorities. In addition, the licensee states that a Black male was offered and declined an on-air position. However, the circumstances of the job offer and the details regarding the specific vacancy are vague. Apparently, the licensee of KMND/KNFM-FM attracted minorities to only seven (24%) of its 29 overall applicant and interview pools and five (20%) of the upper-level applicant and interview pools. The licensee hired four Hispanics, three for upper-level positions during the three year period under review.[16]

23. Our review raises no substantial and material questions of fact warranting designation for hearing. Astroline, supra. The licensee engaged in some recruitment and hired and employed minorities. We find no evidence of employment discrimination. Therefore, grant of the renewal is in the public interest.

24. However, the licensee's recruitment efforts were deficient. Specifically, it failed to recruit so as to attract an adequate pool of minority applicants for at least 66% (19) of its 29 full-time vacancies. The record revealed that minorities were included in only seven (24%) of the licensee's 29 overall applicant and interview pools. Further, only five (20%) of the 25 upper-level applicant and interview pools included minorities. Thus, minorities were absent from 76% of the overall pools and 80% of the upper-level pools. Notwithstanding the absence of minorities from the applicant and interview pools as noted above, it does not appear that the licensee consistently engaged in efforts to attract minorities or otherwise conducted meaningful self-assessment of its program. The licensee recruited for only seven (24%) of its 29 vacancies and did not know the extent to which minority sources were contacted for the 29 positions. Accordingly, a base forfeiture of $12,500 is appropriate. See Policy Statement, supra.

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[16] The Midland, Texas MSA, in which the stations are located, has a 21.0% minority labor force (12.2% Hispanic, 8.0% Black, 0.9% Asian/Pacific Islander, 0.5% American Indian). The 1984 and 1985 Annual Employment Reports list one Hispanic and one American Indian among 16 (5.6%) and 20 (5.0%) full-time employees, respectively, including 16 (6.3%) and 17 (5.9%) upper-level job employees. In the 1986 report, one American Indian is listed among 17 full-time employees (5.9%) and among 15 upper-level job employees (6.7%). The 1987 and 1988 reports list one Hispanic and one American Indian among 20 (5.0%) and 21 (4.8%) full-time employees, respectively, including 17 (5.9%) and 19 (5.3%) upper-level job employees. In the 1989 report, one American Indian is listed among 16 full-time employees (6.3%) and 15 upper-level job employees (6.7%). The 1990 report lists one Hispanic and one American Indian among 17 full-time employees (5.9%) and 15 upper-level job employees (6.7%).

25. Additionally, the licensee's failure to recruit so as to attract an adequate pool of minority applicants for at least 33% of the overall and upper-four full-time positions constitutes egregious misconduct and justifies an upward forfeiture adjustment of $6,250. Secondly, a further upward adjustment of $6,250 is warranted due to the large number of hiring opportunities (29) during the license term. Third, the combination of the above and the location of the stations in a metropolitan area which includes a large minority labor force (21%) justifies an upward adjustment of $6,250. Based on the licensee's overall program deficiencies, a total forfeiture of $31,250 is warranted, along with a short term renewal. See Policy Statement, supra.

26. However, we note that the licensee hired minorities equal to 50% of the minority representation in the Midland MSA. Thus, a $6,250 downward adjustment in the forfeiture is appropriate. See Policy Statement, supra. Under these circumstances, we will issue a Notice of Apparent Liability for $25,000, renew the licenses for a short term and impose reporting conditions.[17]

[17] The licensee, Bakcor Broadcasting, Inc., currently has applications pending for transfer of control (BTC-900222EE and BTCH-900222EF) as well as assignment (BAL-900112EI and BALH-900112EJ). Upon consummation of the transfer and/or assignment, the reporting conditions will pass with the license to the new licensee.

27. The stations' 1990 EEO Program Report and inquiry responses reveal that the licensee filled 35 full-time vacancies, all for upper-level positions, from March 1, 1987, to July 31, 1990. The licensee could document outside recruitment efforts for only 15 vacancies.[18] For these vacancies, the licensee contacted some of the following: Radio & Records, Texas Employment Commission, newspapers,[19] TAB Newsletter, educational institutions,[20] on-air announcements, re-hires, employees referrals and unsolicited resumes. In addition to some of the above-listed sources, the licensee contacted Texas A & M University and community organizations for one of the 15 recruited-for vacancies.[21] For the remaining 20 vacancies, the licensee apparently used only some of the following: on-air announcements, walk-ins, employee referrals, an advertising agency, re-hires, and/or unsolicited resumes. Applicant and interview pool information was provided for only 14 vacancies. For seven of these 14 positions, the licensee attracted 10 minorities among 160 applicants and interviewed 10 minorities among 147 applicants.[22] The record indicates that KTEM/KTEM-FM attracted minorities to 12 (34%) of its overall applicant and interview pools, including five (14%) of the 35 upper-level applicant and interview pools. The licensee hired four minorities (two Hispanics and two Blacks) for five vacancies.[23] One of the Hispanic hires was counted twice

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[18] The licensee reported minority referrals from the Temple Daily Telegram (two), on-air ads (one) and an employee (three).

[19] Recruitment with newspapers included contact with the Temple Daily Telegram, Killeen Herald and Belton Journal.

[20] Contact with educational institutions included use of Baylor University, Paul Quinn College, University of Texas, Central Texas College, Temple Jr. College and McLennan Community College.

[21] American Businesswomen's Association, Business & Professional Women, Temple Independent Ladies Auxiliary, Altrusa Club of Temple, American Association of University Women, NAACP, Casa Hispanica, American GI Forum and Junior League of Temple.

[22] This number of minority applicants does not include three minorities hired during the subject period.

[23] The Killeen-Temple, Texas MSA, in which the stations are located, has a 20.9% minority labor force (10.0% Black, 8.7% Hispanic, 1.8% Asian/Pacific Islander, 0.4% American Indian). The 1984 Annual Employment Report lists one Black (4.0%) and one Hispanic (4.0%) among 25 full-time employees overall, including one

because she was originally hired as a salesworker in August 1989, but departed in September 1989, due to complications in her pregnancy. She was re-hired as News Director in March 1990.

28. There are no substantial and material questions fact warranting designation for hearing. Astroline, supra. The licensee recruited, hired and employed minorities. We find no evidence of employment discrimination. Accordingly, we will grant renewal of the stations' licenses.

29. However, the licensee's recruitment efforts were deficient because it failed to recruit so as to attract an adequate pool of minority applicants for at least 66% (23) of its 35 full-time positions. Our investigation reveals that only 12 (34%) of the overall applicant and interview pools included minorities. Moreover, only five (14%) of the 35 upper-level applicant and interview pools included minorities. Therefore, minorities were absent from 66% of the overall pools and 86% of the upper-level pools. Notwithstanding the absence of minorities from the applicant and interview pools as noted above, it does not appear that the licensee consistently engaged in efforts to attract minorities or otherwise conducted meaningful self-assessment of its program. KTEM/KPLE(FM) did not affirmatively recruit for 20 of its 35 hiring vacancies. Further, the extent to which the licensee contacted minority sources for vacancies is unknown. Accordingly, a base forfeiture of $12,500 is warranted. See Policy Statement, supra.

30. Further, the licensee's failure to recruit so as to attract an adequate pool of minority applicants for at least 33% of the overall and upper-level full-time positions renders its EEO efforts egregiously deficient warranting an upward forfeiture adjustment of $6,250. The licensee's inadequate recruitment justifies two additional upward adjustments of $6,250 each, given the large number of hiring opportunities and the presence of a large minority labor force (20.9%). In sum, these deficiences warrant a short term renewal and a total forfeiture of $31,250. See Policy Statement, supra.

Black (4.8%) and one Hispanic (4.8%) among 21 upper-level job employees. The 1985 report lists two Hispanics (8.7%) among 23 full-time employees overall and one Hispanic (5.3%) among 19 upper-level job employees. In the 1986 report, one Black (4.5%) and one Hispanic (4.5%) are listed among 22 full-time employees overall and one Black (5.0%) and one Hispanic (5.0%) are listed among 20 upper-level job employees. In the 1987 report, one Hispanic is listed among 23 full-time employees overall (4.3%) and among 21 upper-level job employees (4.8%). The 1988 report lists no minorities among 19 full-time employees. The 1989 and 1990 reports list one Black (5.9%) among 17 full-time employees and one Black (6.3%) among 16 upper-level job employees.

31. We note that the licensee hired minorities equal to 50% of the Killeen-Temple labor force for the period May 1, 1987, to July 31, 1990, thus, warranting a $6,250 downward adjustment in the forfeiture. See Policy Statement, supra. Under these circumstances, we will renew the licenses for less than a full term subject to reporting conditions and issue a Notice of Apparent Liability for $25,000.

KSAM/KSAM-FM, Huntsville

32. The stations' 1990 EEO Program Report and inquiry responses reveal that from February 1, 1987, to July 31, 1990,[24] the licensee filled 38 full-time vacancies, including 37 for upper-level positions.[25] For 21 vacancies, the licensee contacted some of the following sources: Sam Houston State University, Radio & Records, Texas Employment Commission, Texas Association of Broadcasters, on-air ads, employees, Huntsville Item[26] and walk-ins.[27] For the remaining 17 vacancies, the licensee used only on-air ads, walk-ins and/or employee referrals. The licensee used more than one source for only 10 of its 38 vacancies and received 15 minorities among 151 applicants for seven of those 10 vacancies. Only one source was used for 28 vacancies[28] for which

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[24] The licensee also submits post-term employment data for six hires through September 4, 1990. For the reasons stated in n.7, supra, we will not consider tnese hires.

[25] In its renewal applications, the licensee reports minority referrals from the following sources during the reporting year: Sam Houston State University/School of Broadcasting (one), Sam Houston State University/radio-tv school (two), on-air ads (one), employees (one) and Radio & Records (two).

[26] The licensee also lists Conroe Courier in its renewal applications; however, this source is not listed as being contacted for any full-time vacancies.

[27] In its first inquiry response, the licensee stated that it has a continuing relationship with the local branch of the NAACP and that "[t]he NAACP is therefore informally apprised of job openings and has not been listed as a referral source for each individual position." In response to a Commission request that it list when and each specific position for which NAACP was contacted, the licensee stated that it merely proposed to contact NAACP.

[28] For 12 of these vacancies, the source listed is an outside source: a newspaper, trade magazine or the Texas Association of Broadcasters. For the remaining 16 vacancies, the

the licensee received only one minority (a hiree) among 30 applicants. Thus, the licensee attracted a total of 16 minorities among 181 applicants for eight (21%) of 38 vacancies. Only three minorities were among the 72 applicants interviewed for three (8%) positions. For 27 of the 28 vacancies for which the licensee used only one source, the person hired was the only applicant[29] while for each of these 28 vacancies, the person hired was the only person who was interviewed. Only one minority, a Hispanic, was hired for an upper-level position during the three year period under review.[30]

33. In its renewal applications, the licensee states that it has made consistent efforts "to meet the FCC parity guidelines regarding employment for women and minorities" and that its efforts have provided a significant number of referrals.[31] The

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only source listed is employee referrals, radio ads or walk-ins.

[29] Three applicants (no minorities) were attracted for one of the 28 positions for which the licensee used only one source.

[30] The Walker County, Texas labor statistics include a 22% minority labor force (15.9% Black, 4.7% Hispanic, 0.9% Asian/Pacific Islander, 0.5% American Indian). The 1984 Annual Employment Report lists one Black among 15 full-time employees (6.7%) and no minorities among 13 upper-level job employees. In the 1985 report, one Black (6.7%) and one Hispanic (6.7%) are listed among 15 full-time employees overall and upper-level. The 1986 report lists one Black (6.3%) and one Asian (6.3%) among 16 full-time employees, including one Black (6.7%) and one Asian (6.7%) among 15 upper-level job employees. In the 1987 report, one Black (6.7%) and one American Indian (6.7%) are listed among 15 full-time employees, including one Black (7.1%) and one American Indian (7.1%) among 14 upper-level job employees. The 1988 report lists one American Indian (7.7%) among 13 full-time employees and no minorities among 11 upper-level job employees. In the 1989 report, no minorities are listed among 13 full-time employees. The 1990 report lists one Hispanic (7.1%) among 14 full-time employees and 13 upper-level job employees (7.7%).

In its first inquiry response, the licensee lists a Black male hired for a full-time announcer position on July 14, 1990. Its amendment to the renewal applications, however, states that he was originally hired as a part-time employee and subsequently promoted to a full-time position. The licensee states that it considers this to be both a promotion and a new hire. Nonetheless, the factors surrounding this position (present employee moved to a new position with increase in responsibilities and pay) constitute a promotion and not a new hire.

[31] See n.11, supra.

licensee notes that the station is located in a college town 70 miles from Houston and, therefore, has a substantial turnover of employees seeking employment in Houston and other larger markets.

34. There are no substantial and material questions of fact warranting designation for hearing. Astroline, supra. The licensee did employ Blacks and Hispanics during the license term, and made some recruitment efforts. In addition, we find no evidence of employment discrimination. Therefore, renewal is in the public interest.

35. However, the licensee's recruitment efforts to attract qualified minorities were deficient because it failed to recruit so as to attract an adequate pool of minority applicants for at least 66% (25) of its 38 full-time positions. Our investigation indicates that minorities were included in eight (21%) of the overall applicant pools and only one (3%) of the 37 upper-level applicant pools. Minorities were included in only three (8%) of the 38 overall interview pools and one (3%) of the 37 upper-level interview pools. Thus, minorities were absent from 79% of the overall applicant pools and 97% of the upper-level applicant pools. Minorities were also absent from 92% of the overall interview pools and 97% of the upper-level interview pools. Notwithstanding the absence of minorities from the applicant and interview pools as noted above, it does not appear that the licensee consistently engaged in efforts to attract minorities or otherwise conducted meaningful self-assessment of its program. The licensee's inadequate efforts resulted, in part, from its failure to contact outside recruitment sources for a substantial number of hiring vacancies 17 of 38 positions (45%). Instead, it used non-productive recruitment methods, such as walk-ins and employee referrals.[32] It appears that no minority sources were contacted for the subject positions. Accordingly, a base forfeiture of $12,500 is warranted. See Policy Statement, supra.

36. In addition, the licensee's failure to recruit so as to attract an adequate pool of minority applicants for at least 33% of the overall and upper-four full-time positions indicates egregiousness, warranting an upward forfeiture adjustment of $6,250. Also, an upward adjustment of $6,250 is appropriate due to the large number of hiring opportunities (38) during the license term. The combination of the foregoing deficiencies, along with the large minority labor force (22%) justifies a further upward adjustment of $6,250, for a total forfeiture of $31,250. Given the number and types of deficiencies noted, a

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[32] In its renewal applications, the licensee proposed contact with minority organizations, including NAACP and LULAC, as well as minority community leaders. However, no minority sources were contacted for the five positions filled after the renewal applications were filed.

short term renewal is also warranted. See Policy Statement, supra. Accordingly, we will renew the licenses for less than a full term subject to reporting conditions and issue a Notice of Apparent Liability for $31,250.

KYKX(FM), Longview

37. The station's 1990 EEO Program Report, opposition and inquiry responses reveal that the licensee filled 34 full-time vacancies, including 32 for upper-level positions from March 24, 1987, to July 31, 1990. The licensee stated that it received minority referrals from on-air ads (one), Longview newspapers (one),[33] and a direct inquiry (one). The licensee could not provide complete information regarding: referral sources contacted for specific vacancies;[34] the number, race and gender of those who applied as well as those who were interviewed for specific positions; and the referral sources of 14 successful applicants, including the Black female who was hired. Thus, it

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[33] The licensee lists as "uncertain" two referrals from on-air ads and nine referrals from Longview newspapers.

[34] In its renewal application, the licensee states that it contacted Community Press, a Black newspaper; NAACP; Metro Chamber of Commerce (Black Chamber of Commerce), Longview Women's Network and Women's Activity Center. However, its inquiry response lists no contacts with these sources for specific vacancies. In response to a second inquiry on this issue, the licensee explained that because these sources were listed on the station's EEO records, it is certain that they were contacted "from time to time." However, because "[n]one of the key people who would have been involved in actively soliciting female and minority personnel ... are still with KYKX-FM or Sun Group, Inc.," it is unable to document the extent of such use. In its opposition, the licensee indicates that the above-listed minority and female sources were added in "early 1990" and it submitted copies of letters dated March 20, 1990, and March 21, 1990, to Metro Chamber of Commerce, Longview Women's Network and Women's Activity Center, in which it requested minority and female referrals without listing specific vacancies. However, we note that for a subsequent position filled in June 1990, the licensee did not contact these or any other recruitment sources.

In addition, the licensee submitted copies of letters dated August 31, 1990, to Community Press, NAACP, and Metro Chamber of Commerce in which it requested referrals for a specific vacancy. Because these efforts occurred 30 days after the license term expired, they are post-term and will not be considered. See n.7, supra.

appears that minorities were attracted to only one (3%) of the 34 overall applicant and interview pools and only one (3%) of the 32 upper-level applicant and interview pools. A review of the referral sources of 20 successful applicants reveals that only five were referred by employment agencies or on-air advertisements and the other 15 were referred by "word of mouth," walk-ins, or personal referrals. The one minority hired during the period under review, and apparently employed full-time during the licensee's tenure,[35] was a Black female hired for an air personality position.

38. NAACP argues that the station's 1990 EEO Program Report "contains all of the telltale signs of a neglected EEO Program." It notes that none of the 14 persons listed as hires during the reporting year was a minority, that none of the community organizations listed as having been contacted produced female or minority referrals and that only three minorities could be identified as candidates from other sources.

39. In its opposition, the licensee acknowledges that the station "has been lacking in its procedures to formally contact minority and other referral sources, and less than thorough about internal recordkeeping concerning applicant flow data for individual job openings." Nonetheless, it states that the record shows a successful effort to secure and hire minority applicants and no instances of discrimination. It points to a variety of general recruitment sources to demonstrate its recruitment outreach to attract minorities.[36] In addition, it cites its employment of a Black female in an upper-level position in 1986, 1987 and 1988 as evidence that the station "encourages" Black employment and attributes its failure to attract more minorities to the station's country and western format. Nonetheless, in early 1990, more sources "which are regarded to be productive in

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[35] The Longview, Texas MSA, in which the station is located, has a 21.8% minority labor force (18.7% Black, 2.2% Hispanic, 0.5% Asian/Pacific Islander, 0.4% American Indian). The 1986 Annual Employment Report lists no minorities among 19 full-time employees. In the 1987 and 1988 reports, one Black is listed among 18 full-time employees (5.6%), including 15 (6.7%) and 17 (5.9%) upper-level job employees, respectively. The 1989 and 1990 reports list no minorities among 17 full-time employees.

[36] The licensee submits copies of ads placed for vacancies, including on-air ads for two positions noted above. In addition, it provides a copy of an on-air ad for a sales position, a newspaper ad and an ad for Radio & Records for program director. The ads for the sales and program director positions do not correspond to any of the positions listed in the licensee's inquiry response and the newspaper ad appears to be for a part-time position.

terms of reaching Black candidates," were added to its recruitment list.

40. There are no substantial and material questions of fact warranting designation for hearing. The licensee did hire and employ Blacks during the license term. In addition, we find no evidence of employment discrimination. Thus, grant of the station's renewal application serves the public interest.

41. However, the licensee's recruitment efforts were deficient. It apparently failed to recruit so as to attract an adequate pool of minority applicants for at least 66% (22) of its 34 full-time positions. The record indicates that only one (3%) of the 34 overall and upper-level applicant and interview pools included a minority. Additionally, one (3%) of the 32 upper-level applicant and interview pools included a minority. Therefore, minorities were absent from 97% of the overall and upper-level applicant and interview pools. Notwithstanding the absence of minorities from the applicant and interview pools as noted above, it does not appear that the licensee consistently engaged in efforts to attract minorities or otherwise conducted meaningful self-assessment of its program. In addition to the licensee's lack of information on the referral sources used for specific vacancies, we note that at least 15 of the 34 successful applicants were referred by "word of mouth," walk-ins, or personal referrals. Accordingly, a base forfeiture of $12,500 is warranted. See Policy Statement, supra.

42. Moreover, KYKX(FM)'s failure to recruit so as to attract an adequate pool of minority applicants for at least 33% of its overall and upper-level full-time positions indicates egregious misconduct which justifies an adjustment of the forfeiture by $6,250. A further upward adjustment of $6,250 is warranted based on the large number of vacancies during the license term. Lastly, the licensee's efforts were particularly inadequate given the large minority labor force (21.8%), thus, an additional upward adjustment of $6,250 is appropriate in this case. Given the combination of the above program deficiencies, a short term is also warranted. See Policy Statement, supra. Accordingly, we will renew the license for a short term subject to reporting conditions and issue a Notice of Apparent Liability for $31,250.[37]

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[37] In addition, aspects of the licensee's assessment concern us. As we have stated consistently, a station's format has no bearing on its EEO obligations. See WINFAS, Inc., 5 FCC Rcd 4902, 4906 n.7 (1990); Leflore Communications, Inc. v. FCC, 66 FCC 2d 734, 784-785 (1975). Further, we note that in its renewal application, KYKX(FM) proposed to contact new recruitment sources, including minority organizations. However, no minority sources were contacted for the position filled after the renewal

V. CONCLUSION

43. After reviewing the evidence and arguments submitted by NAACP and, regarding KEGL(FM), NBMC, and all licensees in the instant case, we find no hearings are warranted and the records of the licensees support the granting of all their renewal applications, albeit for short terms and subject to reporting conditions. Notices of Apparent Liability will issue as follows: KEGL(FM): $18,750; KMND/KNFM(FM): $25,000; KTEM/KPLE(FM): $25,000; KSAM/KSAM(FM): $31,250; and KYKX(FM): $31,250.

VI. ORDERING CLAUSES

44. Accordingly, **IT IS ORDERED**, that the Joint Request for Approval of Settlement Agreement filed by NAACP and the licensee of Stations KMND/KNFM(FM) **IS GRANTED**, the settlement agreement **IS APPROVED** and the petition filed by NAACP **IS DISMISSED.**

45. **IT IS FURTHER ORDERED**, that the Joint Request for Approval of Settlement Agreement filed by NAACP and the licensee of Stations KTEM/KPLE(FM) **IS GRANTED**, the settlement agreement **IS APPROVED** and the petition filed by NAACP **IS DISMISSED.**

46. **IT IS FURTHER ORDERED**, that the Joint Request For Withdrawal filed by NAACP and the licensee of Stations KSAM/KSAM-FM **IS GRANTED** and NAACP's petition **IS DISMISSED.**

47. **IT IS FURTHER ORDERED** that the informal objection filed by the National Black Media Coalition against the renewal application for Station KEGL(FM) **IS DENIED.**

48. **IT IS FURTHER ORDERED** that the petition to deny filed by the NAACP against the renewal applications for Stations KEGL(FM) and KYKX(FM) **IS DENIED.**

49. **IT IS FURTHER ORDERED**, that the renewal application filed by Eagle Radio, Inc. for Station KEGL(FM) **IS GRANTED FOR A SHORT TERM** ending August 1, 1995, subject to reporting conditions specified herein, and pursuant to Section 503, a **NOTICE OF APPARENT LIABILITY FOR FORFEITURE** in the amount of $18,750.

50. **IT IS FURTHER ORDERED**, that the renewal applications filed by Bakcor Broadcasting, Inc., Debtor, for Stations KMND/KNFM(FM) **ARE GRANTED FOR A SHORT TERM** ending August 1, 1995, subject to the reporting conditions specified herein, and pursuant to Section 503, a **NOTICE OF APPARENT LIABILITY FOR FORFEITURE** in the amount of $25,000.

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application was filed.

51. **IT IS FURTHER ORDERED**, that the renewal applications filed by KTEM Radio, Inc. for Stations KTEM/KPLE(FM) **ARE GRANTED FOR A SHORT TERM** ending August 1, 1995, subject to the reporting conditions specified herein, and pursuant to Section 503, a **NOTICE OF APPARENT LIABILITY FOR FORFEITURE** in the amount of $25,000.

52. **IT IS FURTHER ORDERED**, that the renewal applications filed by Walker County Communications, Inc. for Stations KSAM/KSAM(FM) **ARE GRANTED FOR A SHORT TERM** ending August 1, 1995, subject to the reporting conditions specified herein, and pursuant to Section 503, a **NOTICE OF APPARENT LIABILITY FOR FORFEITURE** in the amount of $31,250.

53. **IT IS FURTHER ORDERED**, that the renewal applications filed by Radio Sungroup of Texas, Inc. for Station KYKX(FM) **ARE GRANTED FOR A SHORT TERM** ending August 1, 1995, subject to the reporting conditions specified herein, and pursuant to Section 503, a **NOTICE OF APPARENT LIABILITY FOR FORFEITURE** in the amount of $31,250.

54. **IT IS FURTHER ORDERED** that the licensees of Stations KEGL(FM), KMND/KNFM(FM), KTEM/KPLE(FM), KSAM/KSAM(FM) and KYKX(FM) submit to the Commission an original and one copy of the following information on April 1, 1994, April 1, 1995, and April 1, 1996:

a. For each report, please make two lists divided by full-time and part-time job vacancies during the twelve months preceding the respective reporting dates, indicating the job title and FCC job category, date of hire, the race or national origin and sex of the person hired. This list should also note which recruitment sources were contacted;[38]

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[38] Such a list might start:

1) News Director: Officials and Managers; Full-time.

3 Applicants:	1 White female	A.W.R.T
	1 Hispanic male	National Hispanic Media Coalition
	1 Black female	NAACP

Sources contacted - Local newspaper, A.W.R.T., National Hispanic Media Coalition and NAACP

Selected - Hispanic male (08/19/94)

b. A list of employees as of the March 1st payroll period for each annual report by job title, indicating full-time or part-time status (ranked from highest paid classification), date of hire, sex, and race or national origin; and

c. Details concerning the station's efforts to recruit minorities for each position filled during the 12-month periods specified, including identification of sources used and indicating whether any of the applicants declined actual offers of employment. In addition, the licensee may submit any information it believes relevant regarding the station's EEO performance and its efforts thereunder.

55. The reports are to be filed with the Acting Secretary of the Commission for the attention of the Mass Media Bureau's EEO Branch.

56. Should the parties have any questions regarding this action or require further information concerning employment reports, they may telephone the Mass Media Bureau's EEO Branch at 202-632-7069. With respect to the forfeiture proceeding, the licensees may take any of the actions set forth in Section 1.80 of the Commission's Rules, as summarized in the attachment to this Order. Any comments concerning the ability to pay should include those financial items set forth in the attachment.

57. **IT IS FURTHER ORDERED,** that the Mass Media Bureau send by Certified Mail -- Return Receipt Requested -- one copy of this Memorandum Opinion and Order and Notices of Apparent Liability to all parties.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC 94-18

In re Applications of	)	
	)	
Roy H. Park Broadcasting of Washington, Inc.	)	File Nos. BR-901001YB
	)	BRH-901001UA
For Renewal of Licenses of Stations KEZX(AM)/KEZX-FM Seattle, Washington	)	
	)	
KVI, Inc.	)	File No. BR-900911UE
	)	
For Renewal of License of KVI(AM) Seattle, Washington	)	
	)	
KPLZ, Inc.	)	File No. BRH-900911UB
	)	
For Renewal of License of KPLZ(FM) Seattle, Washington	)	
	)	

MEMORANDUM OPINION AND ORDER
AND NOTICE OF APPARENT LIABILITY

Adopted: January 31, 1994 ; **Released:** February 1, 1994

By the Commission:

I. INTRODUCTION

1. The Commission has before it for consideration: (i) license renewal applications for the four captioned radio stations;[1] (ii) a Petition to Deny timely filed on January 2, 1991, by the Washington State Conference of Branches of the National Association for the Advancement of Colored People and various local NAACP branches (collectively NAACP) against the above renewal applications;[2] (iii) oppositions from the licensees; and

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[1] Stations KVI(AM) and KPLZ(FM) are commonly owned and managed and will be treated as one licensee.

[2] The NAACP challenged the renewal applications of 10 radio stations in Alaska and Washington. This Order addresses the renewal applications of four of those stations. The applications of the remaining stations have already been decided by the Commission in separate actions.

(iv) the licensees' responses to staff letters of inquiry. The NAACP alleges that the above stations violated the Commission's equal employment opportunity (EEO) Rule and policies. The NAACP requests that the Commission designate the licensees' renewal applications for hearing and deny the applications.

II. BACKGROUND

2. In challenging an application pursuant to Section 309(d) of the Communications Act, a petitioner must demonstrate party in interest status. In addition, a petitioner must, as a threshold matter, submit "specific allegations of fact sufficient to show... that a grant of the application would be prima facie inconsistent with [the public interest, convenience, and necessity]." 47 U.S.C. Section 309(d)(1); Astroline Com. Co. Ltd. Partnership v. FCC, 857 F.2d 1556 (D.C. Cir. 1988) (Astroline); Application of Dubuque T.V. Limited Partnership and Sage Broadcasting Corporation of Dubuque, Iowa for Assignment of Television License for KDUB-TV, Dubuque, Iowa, 4 FCC Rcd 1999 (1989). The allegations, except for those of which official notice may be taken, must be supported by the affidavit of a person with personal knowledge of the facts alleged. 47 U.S.C. Section 309(d)(1).

3. The licensee of KVI(AM)/KPLZ(FM) argues that the NAACP should be classified as an informal objector instead of as a petitioner because no one claiming residence in its service area, or claiming to listen to the stations, filed an affidavit in support of the petition to deny. The licensee similarly argues that the petition was not properly filed on behalf of the Seattle Branch of the NAACP because no one from that branch filed a supporting affidavit. While the licensee of KEZX(AM)/KEZX-FM did not challenge the standing of the NAACP, the petitioners filed no supporting affidavits with respect to those applications. Accordingly, because the NAACP failed to meet the requirements for demonstrating party in interest status, we will treat the NAACP as an informal objector against all four Seattle stations. 47 C.F.R. Section 73.3584(b); see also Application of KDEN Broadcasting Co. for Renewal of License of Station KDEN, Denver, Colorado, 55 Rad.Reg. 2d (P&F) 1311, 1311-1312 (1984).

III. PLEADINGS

4. The NAACP derived its factual allegations from the licensees' EEO programs and annual employment reports.[3] Review of the allegations with respect to KEZX(AM)/KEZX-FM led us to conclude

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[3] The licensees were not challenged regarding their recruitment of women. Nonetheless, as is our practice in all cases, we reviewed each licensee's EEO efforts in this respect and found them to be sufficient.

that the NAACP presented a prima facie case demonstrating that unconditional grant of their renewal applications would have been inconsistent with the public interest. Section 309(d)(1) of the Communications Act, 47 U.S.C. Section 309(d)(1). Astroline, supra. Further inquiry was, therefore, necessary regarding KEZX(AM)/KEZX-FM. See Beaumont Branch of the NAACP and the National Black Media Coalition v. FCC, 854 F.2d 501, 506 (D.C. Cir. 1988) (Beaumont); Bilingual Bicultural Coalition on Mass Media, Inc. v. FCC, 595 F.2d 621 (D.C. Cir. 1978) (Bilingual). However, review of the entire record, including the licensee's response to the further inquiry, indicates that there are no substantial and material questions of fact warranting designation for hearing. In addition, we find no evidence that the licensee engaged in discrimination. Thus, grant of each renewal application will serve the public interest. 47 U.S.C. Section 309(d)(2). Astroline, supra.

5. Furthermore, review of the renewal applications of KVI(AM)/KPLZ(FM) leads us to conclude that there are no substantial and material questions of fact warranting designation for hearing. In addition, we find no evidence that the licensee engaged in discrimination. Thus, grant of each application will serve the public interest. 47 U.S.C. Section 309(d)(2). Astroline, supra. Accordingly, the NAACP's informal objection against all four stations is denied. Although we will grant the renewal applications, we will impose the following remedies and sanctions as noted, infra.

IV. DISCUSSION

6. Section 73.2080 of the Commission's Rules requires that a broadcast licensee refrain from employment discrimination and establish and maintain an affirmative action program reflecting positive and continuing efforts to recruit, employ and promote qualified women and minorities. When evaluating EEO performance, the Commission focuses on the licensee's efforts to recruit, employ and promote qualified women and minorities and the licensee's ongoing assessment of its EEO efforts. Such an assessment enables the licensee to take corrective action if qualified women and minorities are not present in the applicant pool. The Commission also focuses on any evidence of discrimination by the licensee. See Sections 73.2080 (b) and (c) of the Commission's Rules, 47 C.F.R. Sections 73.2080 (b) and (c).

7. When a renewal application indicates an absence of discrimination and a record of adequate EEO efforts, the application is granted, if otherwise appropriate. When it fails to evidence a record of adequate EEO efforts, the Commission may impose a variety of sanctions or remedies, such as reporting conditions, renewal for less than a full term, forfeiture, or a combination thereof. Further, the Commission will designate the application for hearing if the facts so warrant. Amendment of

Part 73 of the Commission's Rules Concerning Equal Employment Opportunity in the Broadcast Radio and Television Services, 2 FCC Rcd 3967 (1987) (hereinafter Broadcast EEO), petition for reconsideration pending; see also 4 FCC Rcd 1715 (1989) (request for clarification by National Association of Broadcasters) (hereinafter Clarification of Broadcast EEO). See e.g., Beaumont, supra; Bilingual, supra.

KVI(AM)/KPLZ(FM), Seattle, Washington[4]

8. A review of the licensee's 1990 EEO Program Report, annual employment reports, and response to our inquiry reveals that the licensee filled 35 full-time vacancies, including 26 for upper-level positions, from September 1, 1987, through January 31, 1991. The licensee used 18 general, 15 minority, and three female recruitment sources during the term, but its records do not reflect how often each source was used. Its records indicate that it recruited from sources outside the stations for 11 of the 35 openings. It identified sources for 10 of its 19 minority referrals -- two from Seattle Central Community College, one from the Seattle Times, and seven from employees of the stations. The 19 minority applicants applied for nine openings overall (one upper-level position). Fourteen minorities were interviewed for an unknown number of positions. Six minorities were hired, all for lower-level positions. The licensee employed minorities in every year of the term, including upper-level positions in six out of seven years.[5]

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[4] The license term for all four stations in the instant case is February 1, 1984 - January 31, 1991.

[5] The labor force of the Seattle, Washington MSA is 42.4% female and 9.7% minority (3.1% Black, 3.9% Asian/Pacific Islander, 1.8% Hispanic and 0.9% American Indian). The licensee's Annual Employment Report for 1984 indicates that the licensee employed 57 persons overall (50 upper-level) with four (7.0%) minorities, two (4.0%) of whom were in upper-level positions. The licensee employed two Blacks (3.5%) and two Asians, with one Black (2.0%) and one Asian in upper-level positions. In 1985, the licensee employed 39 persons (32 upper-level) with one minority, a Black (2.6%) employed in a lower-level position. In 1986, the licensee employed 32 persons (25 upper-level) with two (6.3%) minorities, both Black, one (4.0%) of whom was in an upper-level position. In 1987, the licensee employed 38 persons (28 upper-level) with two (5.3%) minorities, both Black, one (3.6%) of whom was in an upper-level position. In 1988, the licensee employed 39 persons (32 upper-level) with two (5.1%) minorities, both Black, one (3.1%) of whom was in an upper-level position. In 1989, the licensee employed 40 employees (35 upper-level) with three (7.5%) minorities, two Blacks (5.0%), one (2.9%) of whom was in an upper-level position, and one Asian (2.5%) in a lower-level position.

9. The NAACP contends that the licensee's record of employing minorities is "deficient." The NAACP also argues that the licensee's EEO performance during the last year of the term was inadequate because the licensee received only nine minority referrals, its 13 minority- and female-specific recruitment sources failed to refer any minorities, and the licensee failed to hire minorities for any of the eight upper-level jobs filled in the renewal year. The NAACP requests a Bilingual investigation and hearing to determine if the stations' "questionable" EEO program and "token" employment of minorities indicate a deliberate violation of the EEO Rule or discrimination.

10. The licensee denies that its EEO recruitment efforts have been deficient and notes that it uses a variety of recruitment sources, has received minority referrals, has interviewed minorities and hired minorities. It notes that the only year it failed to employ minorities in upper-level positions was 1985, when it reduced its upper-level staff from 50 to 32 employees. It states that the only reason it lost the two minorities it employed in upper-level positions in 1984 was because of the overall downsizing of the stations.[6] It further notes that, although it did not hire minorities for upper-level positions from September 1, 1987, through January 31, 1991, it has promoted minorities to upper-level positions during the term. The licensee acknowledged that it did not recruit publicly for some openings and explained that it needed to fill those positions quickly and had to rely on staff referrals. It also notes that it encourages staff to refer minorities and that seven minority referrals during the renewal year came from station staff. In addition, the licensee states that it assesses its EEO efforts and expands its source list on an ongoing basis, and dismisses the NAACP's criticism of the licensee's only receiving minority referrals from general sources. It states that it seeks more productive minority sources but that it considers minority referrals from whatever source refers them.

11. After reviewing the licensee's record, we find no substantial and material questions of fact sufficient to warrant

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In 1990, the licensee employed 41 persons (35 upper-level) with four (9.8%) minorities, two (5.7%) of whom were in upper-level positions. The licensee employed two Blacks (4.9%) and two Asians. One Black (2.9%) and one Asian were in upper-level positions.

[6] The licensee states that it reduced its staff because it combined the operations of its stations in September 1984 from two separate staffs to one, and changed formats from "talk" to music, which reduced the need for staff, particularly those on the air.

a hearing. See Astroline, supra. In addition, we find no evidence indicating that the licensee engaged in discrimination. The licensee used a variety of recruitment sources which produced minority referrals and minority applicants. Six minorities (17.1% of the licensee's 35 overall hires) were hired.

12. However, the licensee's recruitment efforts were deficient because it failed to recruit so as to attract an adequate pool of minority applicants for at least 66% (23) of its 35 full-time positions. Only nine (26%) of its 35 applicant pools contained minorities. Moreover, only one of its 26 upper-level applicant pools (4%) contained minorities. The number of minorities in the overall and upper-level interview pools is unknown. Thus, minorities were absent from 74% of the overall pools and 96% of the upper-level pools. Notwithstanding the absence of minorities from the applicant pools as noted above, it does not appear that the licensee consistently engaged in efforts to attract minorities or otherwise conducted meaningful self-assessment of its program. In this regard, the licensee failed to recruit for 24 of 35 vacancies. It also failed to use minority recruitment sources for 24 vacancies. Accordingly, a base forfeiture of $12,500 is warranted. See Policy Statement, FCC# 94-27 (Adopted January 31, 1994).

13. Further, the licensee's failure to recruit so as to attract an adequate pool of minority applicants for at least 33% of the overall and upper-level full-time positions renders its EEO efforts egregiously deficient warranting an upward forfeiture adjustment of $6,250, for a total forfeiture of $18,750. See Policy Statement, supra.

14. In light of the above, we will issue a Notice of Apparent Liability for $18,750, and impose reporting conditions.

KEZX(AM)/KEZX-FM, Seattle, Washington[7]

15. A review of the licensee's 1990 EEO Program Report, opposition to the petition to deny and responses to our inquiries reveals that the licensee had 53 overall, including 37 upper-level, full-time hiring opportunities from January 2, 1986, through December 3, 1990. The licensee's records indicate that it recruited for only 32 of 53 vacancies. Until the last five months of the license term, the licensee used only six general recruitment sources for 27 of the 32 vacancies, which resulted in minority referrals as follows: various Seattle newspapers for 30 openings (Seattle Times - eight referrals), Art Institute of Seattle for six openings (two referrals), industry referrals for an unknown number of openings (one referral), employee referrals

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[7] The licensee owned the FM station throughout the license term but has owned the AM station only since January 26, 1987.

for all openings (two referrals), Job Service for nine openings (no referrals) and Broadcasting magazine for two openings (no referrals). In addition to these six sources, the licensee used 47 other general recruitment sources for each of the five remaining vacancies after September 1, 1990. Until the last five months of the term, the licensee used three minority recruitment sources which yielded minority referrals as follows: Chinese Post for five openings (one referral), Asian Resettlement Center for seven openings (one referral) and The Facts minority-owned newspaper for 23 openings (no referrals). Starting in the last five months, it used 26 additional minority sources for all of the five openings after September 1, 1990.[8]

16. The licensee's records on minority referrals, applicants and interviewees are incomplete, and it was, therefore, able to report interviewee data for only 14 of its 53 openings.[9] The licensee reported interviewing 371 applicants for those 14 positions, of whom 40 were minorities interviewed for 10 positions. Apart from those 10 positions, three minorities were interviewed for three positions for which they were hired. The licensee, however, has no interview data for those three positions. Thus, minorities were present in 13 applicant/interview pools (five upper-level positions) and the licensee interviewed a total of 43 minorities during the term. The 43 minority interviewees included nine Black applicants, 15 Hispanics and 19 Asians. It interviewed five Blacks, two Hispanics and four Asians for upper-level positions. Of the 53 hires, three were minorities - a Black and an Hispanic hired for upper-level positions, and an Asian hired for a lower-level position.[10] After September 1, 1988, however, the licensee hired

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[8] The licensee reported that it used five female recruitment sources starting in the last five months of the license term but that they produced no minority referrals.

[9] The licensee explained that its recruitment records are incomplete because it has had two management changes since 1987.

[10] See infra note 5 for labor force statistics. The licensee's Annual Employment Report for 1984 indicates that the licensee employed no minorities among its 16 overall employees (14 upper-level). In 1985, the licensee employed 17 persons overall (14 upper-level) with one (5.9%) minority, an Asian lower-level employee. In 1986, the licensee employed 18 persons overall (15 upper-level) with two (11.1%) minorities. One was a Black upper-level employee (6.7% of upper-level employees) and one was an Asian lower-level employee (5.6% of overall employees). In 1987, the licensee employed 21 persons (18 upper-level) with three (14.3%) minorities. One (4.8%) was a Black upper-level employee (5.6% of upper-level employees) and two (9.5%) were Asians in lower-level positions. From 1988 through 1990, the licensee's only minority

no minorities among 34 full-time hires.

17. The NAACP asserts that the licensee's recruitment sources have produced few minority referrals and that the licensee has had "little success" in implementing its EEO program. It asserts that the licensee reported no minorities in full-time positions in 1988, 1989, and 1990.

18. The licensee responded that it has recruited minorities through a variety of sources, including minority sources, for every opening during the license term, although it has records confirming recruitment for only 32 of its 53 openings. In addition, while acknowledging that its records are incomplete, the licensee also notes that it interviewed at least 43 minority applicants for at least 13 positions. It states that it has had limited success in hiring minorities because it is a small station in a market where there are few minorities. It also asserts that it assesses its EEO program results "from time to time" and takes steps to improve its efforts. During the last five months of the license term, the licensee added a total of 78 new recruitment sources, including 26 minority sources.

19. After reviewing the record of Stations KEZX(AM)/KEZX-FM, we find no substantial and material questions of fact sufficient to warrant a hearing. See Astroline, supra. In addition, we find no evidence indicating that the licensee engaged in discrimination.

20. However, the licensee's recruitment efforts were deficient because it failed to recruit so as to attract an adequate pool of minority applicants for at least 66% (35) of its 53 full-time positions. Only 13 (25%) of the 53 overall applicant and interview pools contained minorities. Only five (14%) of the 37 upper-level applicant and interview pools contained minorities. Thus, minorities were absent from 75% of the overall pools and 86% of the upper-level pools. Notwithstanding the absence of minorities from the applicant and interview pools as noted above, it does not appear that the licensee consistently engaged in efforts to attract minorities or otherwise conducted meaningful self-assessment of its program, until the last months of the term. In this regard, the licensee failed to recruit for 21 of 53 vacancies. In addition, it failed to use minority recruitment sources for 25 vacancies. Accordingly, a base forfeiture of

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employee was an Hispanic upper-level employee hired for two months starting on September 1, 1988, not long enough to appear on any Annual Employment Reports. In 1988, the licensee employed 22 persons overall including 19 upper-level. In 1989, the licensee employed 21 persons overall including 18 upper-level. In 1990, the licensee employed 20 persons overall including 18 upper-level.

$12,500 is warranted. See Policy Statement, supra.

21. Furthermore, the licensee's failure to recruit so as to attract an adequate pool of minority applicants for at least 33% of the overall and upper-level full-time positions renders its EEO efforts egregiously deficient warranting an upward forfeiture adjustment of $6,250. Similarly, the combination of the above and its large number of hiring opportunities (53) warrants a further $6,250 upward adjustment, for a total forfeiture of $25,000. Given the number and types of deficiencies noted, a short term renewal is also warranted. See Policy Statement, supra.

22. However, we note that the licensee hired minorities in numbers greater than 50% of minority representation in the relevant labor force. Thus, a $6,250 downward adjustment in the forfeiture is appropriate. See Policy Statement, supra. In light of the above, we will issue a Notice of Apparent Liability for $18,750, renew the license for a short term, and impose reporting conditions.

V. CONCLUSION

23. After considering the information before us, we find that hearings are not warranted and the records of the licensees of KVI(AM)/KPLZ(FM) and KEZX(AM)/KEZX-FM support grant of their renewal applications. The licenses of KVI(AM)/KPLZ(FM) will be renewed subject to a Notice of Apparent Liability for $18,750 and reporting conditions. The licenses of KEZX(AM)/KEZX-FM will be renewed for a short term subject to a Notice of Apparent Liability for $18,750 and reporting conditions.

VI. ORDERING CLAUSES

24. Accordingly, **IT IS ORDERED** that the informal objection filed by the NAACP against the licensees of KVI(AM)/KPLZ(FM) and KEZX(AM)/KEZX-FM **IS DENIED**.

25. **IT IS FURTHER ORDERED** that the license renewal applications filed by KVI, Inc. for Station KVI(AM) and KPLZ, Inc. for Station KPLZ(FM) **ARE GRANTED** subject to the EEO reporting conditions specified herein.

26. **IT IS FURTHER ORDERED** that the license renewal applications filed by Roy H. Park Broadcasting of Washington, Inc. for Stations KEZX(AM)/KEZX-FM **ARE GRANTED FOR A SHORT TERM** ending Febuary 1, 1995, subject to reporting conditions specified herein.

27. **IT IS FURTHER ORDERED** that, pursuant to Section 503 of the Communications Act of 1934, as amended, 47 U.S.C. Section 503,

this document constitutes a **NOTICE OF APPARENT LIABILITY FOR FORFEITURE** in the amount of $18,750 for the licensee of KVI(AM)/KPLZ(FM), and in the amount of $18,750 for the licensee of KEZX(AM)/KEZX-FM.

28. IT IS FURTHER ORDERED that the licensees of Stations KVI(AM)/KPLZ(FM) and KEZX(AM)/KEZX-FM file an original and one copy of the following information on October 1, 1994, October 1, 1995, and October 1, 1996:

(a) For each report, please make two lists divided by full-time and part-time job vacancies during the twelve months preceding the respective reporting dates, indicating the job title, date of hire, the race or national origin, sex and the referral source of each applicant for each job and the race or national origin and sex of the person hired. The list should also note which recruitment sources were contacted;[11]

(b) a list of employees as of the September 1, 1994, payroll period for the first report and as of the September 1, 1995, and the September 1, 1996, payroll periods for the second and third reports, by job title, indicating part-time or full-time status (ranked from the highest paid classification), date of hire, sex and race or national origin;

(c) details concerning the station's efforts to recruit minorities for each position filled during the period specified, including identification of sources used and indicating whether any of the applicants declined actual offers of employment. In addition, the licensee may submit any relevant information with regard to the station's EEO performance and efforts thereunder.

29. IT IS FURTHER ORDERED, that the Mass Media Bureau send by Certified Mail -- Return Receipt Requested -- one copy of this Memorandum Opinion and Order and Notice of Apparent Liability to all parties.

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[11] Such a list might start:
(1) News Director: Officials and Managers; Full-time.
3 Applicants: 1 White female A.W.R.T.
1 Black male Urban League
1 Black female NAACP
Sources Contacted: Local Newspaper, A.W.R.T., Urban League and NAACP.
Selected: Black male (12/19/93).

30. The reports are to be filed with the Secretary of the Commission for the attention of the Mass Media Bureau's EEO Branch. Should the parties have any questions regarding this action, they may telephone the Mass Media Bureau's EEO Branch at 202-632-7069. Regarding the forfeiture proceedings, the licensees of KVI(AM)/KPLZ(FM) and KEZX(AM)/KEZX-FM may take any of the actions set forth in Section 1.80 of the Commission's Rules, as summarized in the attachment to this Memorandum Opinion and Order and Notice of Apparent Liability. Any comments relating to their ability to pay should include those financial letters set forth in the noted attachment.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC 94-19

In re Applications of	)	
	)	
North County Broadcasting Corporation, Debtor-in Possession[1]	)	File Nos. BR-900730YH BRH-900730B2
	)	
For Renewal of Licenses of Stations KSPA(AM)/KOWF(FM) Escondido, California	)	

MEMORANDUM OPINION AND ORDER

Adopted: January 31, 1994 **Released:** February 1, 1994

By the Commission:

I. INTRODUCTION

1. The Commission has before it for consideration: (i) license renewal applications filed by North County Broadcasting Corporation for Stations KSPA(AM)/KOWF(FM), Escondido, California; (ii) a Petition to Deny timely filed on November 1, 1990, by the California State Conference of Branches of the National Association for the Advancement of Colored People (NAACP), the National Black Media Coalition, the Bay Area Black Media Coalition and the Los Angeles Black Media Coalition (collectively NBMC) against the above-captioned renewal applications;[2] (iii) the licensee's opposition to the petition; (iv) and the licensee's responses to Commission inquiries. The NAACP/NBMC allege that the challenged stations violated the Commission's Equal Employment Opportunity (EEO) Rule and policies. Accordingly, they request that we investigate the stations' employment practices and designate the renewal applications for hearing.

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[1] The assignment of licenses from North County Broadcasting Corporation to North County Broadcasting, Debtor-in-Possession, were granted on October 28, 1992.

[2] The Petition to Deny was directed against 32 radio stations in California. The challenges against the other stations will be addressed in other Orders.

II. BACKGROUND

2. STANDING. The licensee challenges the NAACP/NBMC's standing to petition to deny the instant renewal applications. Citing Applications of Certain Broadcast Stations Serving Communities in the States of Michigan and Ohio, 3 FCC Rcd 6944 (1988) (Michigan/Ohio) and Applications for Renewal of Certain Broadcast Stations Serving Melbourne, Florida and Other Communities in the Florida Area, 5 FCC Rcd 6738 (1990), it argues that the NAACP/NBMC's statements submitted with the Petition to Deny did not assert listenership or service area residency and, therefore, do not establish standing to challenge the above-cited renewal applications. Based on the foregoing, the licensee contends that the petition must be treated as an informal objection.

3. In challenging an application pursuant to Section 309(d) of the Communications Act, a petitioner must demonstrate party in interest status. In addition, a petitioner must, as a threshold matter, submit "specific allegations of fact sufficient to show ... that a grant of the applications would be prima facie inconsistent with [the public interest, convenience, and necessity]." 47 U.S.C. Section 309(d)(1). Astroline Com. Co. Ltd. Partnership v. FCC, 857 F.2d 1556 (D.C. Cir. 1988) (Astroline); Application of Dubuque T.V. Limited Partnership and Sage Broadcasting Corporation of Dubuque, Iowa for Assignment of Television License for KDUB-TV, Dubuque, Iowa, 4 FCC Rcd 1999 (1989). The allegations, except for those of which official notice may be taken, must be supported by the affidavit of a person with personal knowledge of the facts alleged. 47 U.S.C. Section 309(d)(1).

4. Filed with the petition to deny was an unsigned declaration under penalty of perjury from the Chairman of the National Black Media Coalition. He is a resident of the Washington, D.C. area, and does not state that he is either a listener of the challenged stations or a resident of the service area. The petition also contained a statement under penalty of perjury from the president of the California State Conference of the NAACP. However, the president does not state that he is either a listener of the challenged stations or a resident of their service area. The Commission has held previously that without such assertions, the declaration does not satisfy the standing requirements of the Act. See Michigan/Ohio, supra; see also Applications of KDEN Broadcasting Co. for Renewal of License of Stations KDEN, Denver, Colorado, 55 Rad. Reg. 2d (P&F) 1311, 1311-1312 (1984). Accordingly, we will treat both the NAACP and the NBMC as informal objectors in their challenge against Stations KSPA(AM)/KOWF(FM) pursuant to 47 C.F.R. Section 73.3584.

III. PLEADINGS

5. The NAACP/NBMC derived their factual allegations from the licensee's EEO program and annual employment reports. Review of their allegations led us to conclude that the NAACP/NBMC presented a prima facie case demonstrating that unconditional grant of the renewal applications would have been inconsistent with the public interest.[3] Section 309(d)(1) of the Communications Act, 47 U.S.C. Section 309(d)(1). Astroline, supra. Further inquiry was, therefore, necessary. See Beaumont Branch of the NAACP and the National Black Media Coalition v. FCC, 854 F.2d 501, 506 (D.C. Cir. 1988) (Beaumont); Bilingual Bicultural Coalition on Mass Media, Inc. v. FCC, 595 F.2d 621 (D.C. Cir. 1978) (Bilingual).

6. Review of the NAACP/NBMC's allegations and supporting documentation as well as the licensee's renewal applications, opposition and inquiry response now leads us to conclude that there are no substantial and material questions of fact warranting designation for a hearing. In addition, we find no evidence that the licensee engaged in discrimination. Thus, grant of the applications will serve the public interest. 47 U.S.C. Section 309(d)(2). Astroline, supra. However, we will grant renewal, but with appropriate remedies and sanctions.

IV. DISCUSSION

7. Section 73.2080 of the Commission's Rules, 47 C.F.R. Section 73.2080, requires that a broadcast licensee refrain from employment discrimination and establish and maintain an affirmative action program reflecting positive and continuing efforts to recruit, employ and promote qualified women and minorities. When evaluating EEO performance, the Commission focuses on the licensee's efforts to recruit, employ and promote qualified minorities and women and the licensee's ongoing assessment of its EEO efforts. Such an assessment enables the licensee to take corrective action if qualified minorities and women are not present in the applicant pool. The Commission also focuses on any evidence of discrimination by the licensee. See Sections 73.2080(b) and (c) of the Commission's Rules, 47 C.F.R. Sections 73.2080(b) and (c).

8. When the renewal application indicates an absence of evidence of discrimination and a record of adequate EEO efforts, the application is granted, if otherwise appropriate. When it fails to evidence a record of adequate EEO efforts, the Commission may

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[3] The licensee was not challenged regarding its recruitment of women. Nonetheless, as is our practice in all cases, we reviewed the licensee's EEO efforts in this respect and found them to be sufficient.

impose a variety of remedies and sanctions, such as reporting conditions, renewal for less than a full term, forfeiture, or a combination thereof. Further, the Commission will designate the renewal application for hearing where the facts so warrant. Amendment of Part 73 of the Commission's Rules Concerning Equal Employment Opportunity in the Broadcast Radio and Television Services, 2 FCC Rcd 3967 (1987) (Broadcast EEO), petition for reconsideration pending; see also 4 FCC Rcd 1715 (1989) (request for clarification by the National Association of Broadcasters). See e.g., Beaumont, supra; Bilingual, supra.

9. Review of the licensee's renewal application, opposition and inquiry responses reveals that the stations had 54 full-time hiring opportunities, including 48 for upper-level positions, from September 16, 1987, through July 30, 1990.[4] According to its renewal application, the licensee contacted the following general sources and received the cited number of minority referrals: The Times Advocate (two), The San Diego Union (0), three local schools (0), and the Employment Development Department of the State of California (0). The licensee also states that it contacted the following minority and women's sources and received the cited number of minority referrals: The California Chinese News (2), La Prensa (0), American Women in Radio and Television (0), and the Urban League (0). The licensee states that other recruitment sources contacted during the period under review included eight publications, two government agencies, six employment services, three female organizations and 16 minority organizations. For 32 of the 54 vacancies, it contacted 3-7 general sources and at least one minority source and for another 12 vacancies, 1-3 general sources. The licensee contacted 15 general, 29 minority and four female sources for the remaining 10 vacancies. Eighteen of the 305 applicants[5] for the 54 positions were minorities (16 Hispanics and two Asians) who were in the applicant pools for 14 of the 54 positions. Four

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[4] The San Diego Metropolitan Statistical Area is 22.6% minority (4.5% Black, 13.4% Hispanic, 4.1% Asian and .6% American Indian). The assignment of license from Palomar Broadcasters Corporation to North County Broadcasting Corporation was consummated on September 16, 1987. The stations' 1988 Annual Employment Report lists one Hispanic on an overall staff of 19 (5.3%) and an upper-level staff of 17 (5.9%). In 1989, the stations employed two Hispanics on an overall staff of 18 (11.1%) and an upper-level staff of 16 (12.5%). In 1990, the stations employed one Hispanic on an overall staff of 14 (7.1%) and an upper-level staff of 12 (8.3%).

[5] The licensee states that it interviewed all applicants.

Hispanics were hired for upper-level positions.[6] The licensee states in its renewal application that it "is seeking to expand the list of agencies and publications which may attract qualified minorities and women," and to establish an internship program.

10. The NAACP/NBMC argue that, because the previous licensee of the stations received a conditional renewal in January 1985, the present licensee was on notice that the stations had a history of serious EEO deficiencies. Moreover, the NAACP/NBMC contend that the stations' 1990 EEO program was deficient on its face. They both state that none of the referral organizations yielded any minorities and only two minorities were hired for 30 vacancies occurring during the renewal year. The NAACP/NBMC contend that although the licensee promised to expand its list of recruitment sources to attract more females and minorities, it did not name any of them. Furthermore, they maintain that the licensee's promise to look into an internship program is no commitment at all. They contend that the stations' questionable EEO program, combined with their failure to employ more than a token number of minorities during the license term, may be indicative of a deliberate violation of the EEO Rule or of discrimination. The NAACP/NBMC predict that no further EEO efforts will be undertaken if the licenses are renewed.

11. Although none of the organizations it contacted during the renewal year yielded minority referrals, the licensee states that 10 minorities applied for five of the 30 positions during this period, two were hired and an additional minority was offered but refused employment. The licensee states that it reassessed its EEO program efforts and began contacting a list of recruitment sources in August 1989 which included 29 minority-specific sources, 16 general sources and four female sources. However, the licensee admits that when its analysis of the July 1989 through June 1990 reporting period showed that only Radio and Records was contacted for programming positions,[7] the licensee determined that it had to take steps to ensure that the expanded list of minority sources would be contacted for every vacancy in the future. It states that it will continue to assess its EEO program on an ongoing basis to ensure that sufficient numbers of minority applicants are forthcoming.

12. Based on the foregoing, we find no substantial and material

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[6] The licensee states that it offered another upper-level position to an Hispanic male but he declined the offer.

[7] The licensee indicates that it contacted only Radio and Records for five of the 17 positions occurring between August 1989 and July 30, 1990. However, we note that, for one of these positions, Radio and Records referred a successful Hispanic applicant.

question of fact to warrant designation of this case for hearing. Astroline, supra. In addition, the licensee's record does not reveal evidence of discrimination. While 74% (40 of 54) of the licensee's applicant and interview pools contained no minorities, we believe that its overall efforts were such that no forfeiture sanction is warranted. In this regard, the licensee affirmatively recruited and maintained applicant flow records for every vacancy, contacted minority sources for 42 of its 54 vacancies (77%), and hired four Hispanics, the dominant and only significantly represented minority group in the labor force, for upper-level positions. Thus, Hispanics, who constitute 13.4% of the labor force, were hired for 8.33% of the upper-level vacancies. Further, we note that from 1988 to 1990, Hispanics were employed in upper-level positions in excess of 50% of parity, except for the first year when employment was close to 50% of parity. Finally, it is clear that the licensee engaged in some self-assessment. Accordingly, renewal of the licenses is appropriate.

13. However, the licensee failed to self-assess its EEO program adequately. As noted above, only 14 of 54 (26%) of the applicant and interview pools contained minorities. Despite having few minorities in its applicant and interview pools, the licensee did not significantly expand its list of recruitment sources until the renewal year and did not use this list to recruit for every opening until the end of the license term. Accordingly, we impose reporting conditions to ensure that the licensee engages in sufficient self-assessment in the future.[8]

V. CONCLUSION

14. After considering the evidence and arguments submitted by the NAACP and the licensee, we find that a hearing is not warranted. Renewal subject to reporting conditions to monitor future EEO compliance is warranted for Stations KSPA(AM)/KOWF(FM).

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[8] Although, as the NAACP/NBMC correctly point out, the stations were granted renewal subject to reporting conditions at the end of the prior license term, we do not believe anything greater than the imposition of reporting conditions is warranted given the facts herein. Generally, prior violations of our EEO Rule will be considered when the licensee's overall EEO record during the license term under review warrants a forfeiture. See Policy Statement, __ FCC Rcd __ (1994). The licensee's record in this case does not warrant a forfeiture. Moreover, after reviewing the entire record of this case, see e.g., para. 12, supra, it does not appear that a stronger sanction is warranted.

VI. ORDERING CLAUSES

15. Accordingly, **IT IS ORDERED** that the informal objection filed by the NAACP and the NBMC against KSPA(AM)/KOWF(FM) **IS DENIED**.

16. **IT IS FURTHER ORDERED** that the license renewal applications filed by North County Broadcasting Corporation for KSPA(AM)/ KOWF(FM) **ARE GRANTED** subject to reporting conditions as specified herein.

17. **IT IS FURTHER ORDERED** that the licensee of KSPA(AM)/KOWF(FM) submit to the Commission an original and one copy of the following information on August 1, 1994, August 1, 1995, and August 1, 1996:

(a) For each report, please make two lists divided by full-time and part-time vacancies during the 12 months preceding the respective reporting dates, indicating the job title and FCC job category of the position, the race or national origin, sex and the referral source of each applicant for each and the race or national origin and sex of the person hired. The lists should also note which recruitment sources were contacted;[9]

(b) A list of employees as of the July 1, 1994 payroll period for the first report and as of the July 1, 1995, and July 1, 1996 payroll periods for the second and third reports by job title and FCC job category indicating full-time or part-time status (ranked from highest paid classification), date of hire, sex and race or national origin;

(c) details concerning the stations' efforts to recruit minorities for each position filled

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[9] Such a list might start:
(1) News Director; Officials and Managers;
Full-time
3 Applicants: 1 White female A.W.R.T.
1 Black male Urban League
1 Black female NAACP
Sources Contacted: Local Newspaper, A.W.R.T., Urban League, and NAACP
Selected: Black male (03/15/91)

during the 12-month period specified, including identification of sources used and indicating whether any of the applicants declined actual offers of employment. In addition, the licensee may submit any relevant information with regard to the station's EEO performance and efforts thereunder.

18. **IT IS FURTHER ORDERED** that the Mass Media Bureau send by Certified Mail -- Return Receipt Requested -- one copy of this Memorandum Opinion and Order to all parties.

19. The reports are to be filed with the Secretary of the Commission to the attention of the Mass Media Bureau's EEO Branch. Should the parties have any questions regarding this action, they may telephone the Mass Media Bureau's EEO Branch (202-632-7069).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC 94-20

In re Applications of	)	
	)	
	)	
STAUFFER COMMUNICATIONS, INC.	)	BR-900329YH
	)	BRH-900329UE
For Renewal of Licenses of	)	
Stations KGNC/KGNC-FM[1]	)	
Amarillo, Texas	)	
	)	
	)	
WALLER BROADCASTING, INC.	)	BR-900322UE
	)	BRH-900322UD
For Renewal of Licenses of	)	
Stations KEBE/KOOI(FM)	)	
Jacksonville, Texas	)	
	)	
	)	
FIRST GREENVILLE CORPORATION	)	BR-900330WY
	)	BRH-900330WL
For Renewal of Licenses of	)	
Stations KGVL/KIKT(FM)	)	
Greenville, Texas	)	
	)	

MEMORANDUM OPINION & ORDER
AND NOTICE OF APPARENT LIABILITY

Adopted: January 31, 1994; **Released:** February 1, 1994

By the Commission:

I. INTRODUCTION

1. The Commission has before it for consideration: (i) license renewal applications from the above-listed radio stations in Texas; (ii) a timely filed Petition to Deny by the Texas State Conference of Branches of the NAACP and its various local branches (collectively "NAACP") against the license renewal

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[1] KGNC-FM's call sign was changed from KMLT(FM) effective November 2, 1992.

applications of the above-listed radio stations;[2] (iii) oppositions filed by the licensees; and (iv) the licensees' responses to staff letters of inquiry.

II. BACKGROUND

2. NAACP alleges that the challenged stations violated our Equal Employment Opportunity (EEO) Rule and policies. Accordingly, it requests that we conduct an investigation of the employment practices of the stations pursuant to Bilingual Bicultural Coalition on Mass Media, Inc. v. FCC, 595 F.2d 621 (D.C. Cir. 1978) (Bilingual) and designate the renewal applications for hearing. The licensees deny NAACP's allegations and request unconditional renewals.

III. PLEADINGS

3. Standing. The licensee of Stations KGNC/KGNC-FM argues that the declaration under penalty of perjury filed by NAACP regarding these stations is insufficient to establish standing because the President of the Amarillo Branch does not demonstrate that he is a resident within the service area of the stations. In challenging an application pursuant to Section 309(d)(1) of the Communications Act, a petitioner must demonstrate party in interest status. In addition, a petitioner must, as a threshold matter, submit "specific allegations of fact sufficient to show that a grant of the application would be prima facie inconsistent with [the public interest, convenience and necessity]." 47 U.S.C. Section 309(d)(1). See also Astroline Communications Co.

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[2] NAACP also challenged the renewal applications for Stations KBIL/KBIL-FM in San Angelo, KMND/KNFM(FM) in Midland, KTEM/KPLE(FM) in Temple, KSAM/KSAM-FM in Huntsville, and KYKX(FM) in Longview, Texas. NAACP and NBMC also challenged the renewal of KEGL(FM) in Fort Worth, and KNUZ/KQUE(FM) in Houston, Texas.

The Commission terminated Station KBIL(AM)'s authority to operate and deleted its call sign by letter dated June 10, 1992. Station KBIL-FM's renewal and assignment applications were granted subject to conditions. See Application for License Renewal of Station KBIL-FM San Angelo, Texas, 7 FCC Rcd 5292 (1992). The NAACP entered into settlement agreements with the licensees of KMND/KNFM(FM) and KTEM/KPLE(FM). In addition, the NAACP and the licensee of KSAM/KSAM-FM filed a Joint Request for Approval of Withdrawal. The EEO records of these and the other stations will be reviewed in a separate order.

Ltd. Partnership v. FCC, 857 F.2d 1556 (D.C. Cir. 1988) (Astroline); Application of Dubuque T.V. Limited Partnership and Sage Broadcasting Corporation of Dubuque, Iowa for Assignment of Television License for KDUB-TV, Dubuque, Iowa, 4 FCC Rcd 1999 (1989). The allegations, except for those of which official notice may be taken, must be supported by the affidavit of a person with personal knowledge of the facts alleged. 47 U.S.C. Section 309(d)(1).

4. NAACP submitted timely statements under penalty of perjury from the Presidents of the Amarillo Branch regarding KGNC/KGNC-FM, the Tyler Branch regarding KEBE/KOOI(FM) and the Greenville Branch regarding KGVL/KIKT(FM). The declarations are from listeners of the respective stations and, therefore, meet the requirement for establishing standing for the designated branch and the Texas State Conference of Branches of the NAACP. See American Legal Foundation v. FCC, 808 F.2d 84 (D.C. Cir. 1987); Petition for Rulemaking to Establish Standing to Determine the Standing of a Party to Petition to Deny a Broadcast Application, 82 FCC 2d 89, 98-99 (1980). Accordingly, we find that the challenge filed by NAACP constitutes a valid petition to deny against stations KGNC/KGNC-FM, KEBE/KOOI(FM) and KGVL/KIKT(FM). See 47 C.F.R. Section 73.3584.

5. Prima Facie Case. NAACP derived its factual allegations from the licensees' EEO programs and annual employment reports. Review of each licensee's EEO record led us initially to conclude that NAACP presented a prima facie case demonstrating that unconditional grant of the renewal applications would have been inconsistent with the public interest. Section 309(d)(1) of the Communications Act, 47 U.S.C. Section 309(d)(1); Astroline, supra.[3] Further inquiry was therefore necessary. See Beaumont Branch of the NAACP and the National Black Media Coalition v. FCC, 854 F.2d 501, 506 (D.C. Cir. 1988) (Beaumont); Bilingual, supra.

6. However, subsequent review of NAACP's EEO allegations, as well as each licensee's renewal applications, opposition and inquiry responses leads us to conclude that there are no substantial and material questions of fact warranting designation for hearing. In addition, we find no evidence of employment discrimination. Thus, grant of each application will serve the public interest. 47 U.S.C. Section 309(d)(2). Astroline, supra. Accordingly, we will grant renewal, but with appropriate remedies and sanctions.

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[3] As is our practice in all cases, we reviewed the licensees' EEO efforts toward both women and minorities. We find each licensee's record of recruiting women sufficient.

IV. DISCUSSION

7. Section 73.2080 of the Commission's Rules requires that a broadcast licensee refrain from employment discrimination and establish and maintain an affirmative action program reflecting positive and continuing efforts to recruit, employ and promote qualified women and minorities. When evaluating EEO performance, the Commission focuses on the licensee's efforts to recruit, employ and promote qualified women and minorities and the licensee's ongoing assessment of its EEO efforts. Such an assessment enables the licensee to take corrective action if qualified women and minorities are not present in the applicant pool. The Commission also focuses on any evidence of discrimination by the licensee. See Sections 73.2080(b) and (c) of the Commission's Rules, 47 C.F.R Sections 73.2080(b), 73.2080(c).

8. When a renewal application indicates an absence of discrimination and a record of adequate EEO efforts, the application is granted, if otherwise appropriate. When it fails to evidence a record of adequate EEO efforts, the Commission may impose a variety of remedies or sanctions, such as reporting conditions, renewal for less than a full term, forfeiture, or a combination thereof. Further, the Commission will designate the application for hearing if the facts so warrant. Amendment of Part 73 of the Commission's Rules Concerning Equal Employment Opportunity in the Broadcast Radio and Television Services, 2 FCC Rcd 3967 (1987), petition for reconsideration pending; see also 4 FCC Rcd 1715 (1989) (request for clarification by National Association of Broadcasters). See e.g., Beaumont, supra; Bilingual, supra.

KGNC/KGNC-FM, Amarillo

9. The stations' 1990 EEO Program Report, opposition and inquiry responses reveal that the licensee filled 60 full-time vacancies, including 54 for upper-level positions, from April 1, 1987, to July 31, 1990.[4] The licensee contacted one or more of

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[4] The licensee notes that it hired an Hispanic female, apparently a referral from an Hispanic-oriented broadcast station, for a clerical position on August 1, 1990. Because this hire occurred on the date of license expiration, it is a post-term hire. See 47 C.F.R. Section 73.1020(a). Post-term EEO performance is not considered in the Commission's evaluation of a licensee's EEO record during a license term if that record, standing alone, is so deficient that it would merit denial of renewal or other sanctions. Rust Communications Group, Inc., 79 FCC 39, 53 (1979). Here, we will not consider the licensee's post-term Hispanic hire because, as we state, infra, we find that the licensee's EEO record during

the following sources for 44 vacancies and received minority referrals as follows: the Amarillo Globe News (five), on-air ads (four), the Texas Employment Commission (three), other broadcast stations (one), employees (one), West Texas State University Career Planning (one), the Amarillo Chamber of Commerce or a broadcast station (one), employment agencies (0), Amarillo College (0), Radio & Records (0), Broadcasting Magazine (0), Texas Tech (0) and a list of community and minority organizations (0).[5] For 15 of the 16 remaining vacancies, the licensee used the following sources and received minority referrals, as follows: applications on file (0), walk-ins (0), or employee referrals (0) for seven vacancies; re-hired a former employee for one vacancy; hired applicants (including one minority), from other stations for five vacancies; hired an applicant, apparently from a real estate company, for one vacancy; and used the Texas State Network News Director, "person-to-person recruitment" and walk-ins for one vacancy. The licensee did not know which, if any, recruitment sources were contacted for the remaining vacancy.

10. The licensee did not provide separate applicant pool information, but did provide interview pool information. The licensee interviewed 18 minorities among 209 applicants overall, including 16 minorities among 184 applicants for upper-level positions. Minorities were considered for 14 of the 60 full-time vacancies. For the remaining 46 positions, the licensee interviewed no minority applicants. The licensee hired five minorities (four Hispanics and one Black), including three minorities (two Hispanics and one Black) for upper-level positions.[6] All but one minority hire occurred during the 12-

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the licensee term does warrant a sanction.

[5] This list included: Alamo East Center, Alamo Neighborhood Center, Amarillo United Citizens Forum, Camara De Comercio Hispano, Greater Mount Olive Baptist Church, Jenkins Chapel Baptist Church, Los Barrios, NAACP, North Branch Library, Wesley Community Center, Hilltop Learning Center, LULAC, Motivation Education & Training, New Hope Baptist Church, YMCA, and Amarillo Senior Citizens Association. At least 15 of these sources were contacted for 31 vacancies.

[6] The Amarillo, Texas MSA, in which the stations are located, has a 13.5% minority labor force (7.6% Hispanic, 4.5% Black, 0.9% Asian/Pacific Islander, 0.5% American Indian). The 1984 Annual Employment Report lists one Black among 26 full-time employees (3.8%), including one Black among 24 upper-level job employees (4.2%). In the 1985 and 1986 reports, one Black and one Hispanic are listed among 26 full-time employees (7.7%) and among 24 upper-level job employees (8.3%). The 1987, 1988 and 1989 report list no minorities among 21, 20 and 24 full-time employees,

month period prior to filing the renewal applications. The licensee notes that it has difficulty locating qualified minority candidates but that it continues to contact all recruitment sources.

11. NAACP notes that, in its 1983 renewal applications, the licensee reported difficulties attracting minorities, but added five sources, including two minority organizations, to its recruitment list. In 1990, the licensee continued to express difficulty attracting minorities but, unlike in 1983, no remedies were proposed. NAACP notes that the licensee received only five minority referrals and hired only two minorities among 15 upper-level vacancies reportedly filled during the reporting year. It argues that, based on a 10-year record, another seven years of EEO failure can be anticipated.

12. In opposition, the licensee states that it has regularly contacted "up to eighteen sources specializing in minority and female candidates ...," hired and employed minorities, and self-assessed its program. It states that its annual employment reports list a minority full and/or part-time employee in each year and that it attracted several minority referrals from general and minority sources. The licensee also claims that it has evaluated its EEO program, resulting in the addition of two new sources. In addition, the licensee notes its consistent employment of minorities in positions of significant responsibility but states that, as a result of its format,[7] its location in a small market, and competition with area stations, it has difficulty attracting and retaining minority applicants.[8]

13. There are no substantial and material questions of fact warranting designation for hearing. Astroline, supra. Moreover, there is no evidence that the licensee engaged in employment discrimination. Accordingly, grant of the stations' renewal applications is warranted.

14. However, the licensee's recruitment efforts were deficient because it failed to recruit so as to attract an adequate pool of

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respectively. In the 1990 report, one Black and one Hispanic are listed among 27 full-time employees (7.4%) and 23 upper-level employees (8.7%).

[7] The AM station has a full-time news talk format while the FM station broadcasts satellite-delivered soft adult contemporary music, and one live morning music show.

[8] The licensee reports that all five minorities hired during the period under review have departed the stations; all voluntarily. In this regard, we note that 44 of the 55 non-minorities hired during this period also departed the stations.

minority applicants for at least 66% (40) of its 60 full-time positions.[9] Only 14 of the 60 overall interview pools (23%) pools contained minorities. Only 12 of 54 upper-level interview pools (22%) contained minorities. Thus, minorities were absent from 77% of the overall pools and 78% of the upper-level pools. Notwithstanding the absence of minorities from the interview pools as noted above, it does not appear that the licensee consistently engaged in efforts to attract minorities or otherwise conducted meaningful self-assessment of its program. The licensee failed to recruit for 16 of its 60 hires (27%) and failed to contact minority sources for 29 of its 60 hires. Accordingly, a base forfeiture of $12,500 is warranted. See Policy Statement, FCC# 94-27 (Adopted January 31, 1994).

15. In addition, the licensee's failure to recruit so as to attract an adequate pool of minority applicants for at least 33% of the overall and upper-level full-time positions renders its EEO efforts egregiously deficient warranting an upward adjustment of $6,250. Similarly, the combination of the above and its large number of hiring vacancies (60) warrants a further $6,250 upward adjustment, for a total forfeiture of $25,000. Given the number and types of deficiencies noted, a short term renewal is also warranted. See Policy Statement, supra. In light of the above, we will issue a Notice of Apparent Liability for $25,000, renew the licenses for a short term and impose reporting conditions.

KEBE/KOOI(FM), Jacksonville

16. The stations' 1990 EEO Program Report, opposition and inquiry responses indicate that the licensee filled 57 full-time vacancies, including 52 for upper-level positions, from April 1, 1987, to July 31, 1990. The licensee contacted one or more of the following sources for 43 vacancies and documented minority referrals as follows: the Jacksonville Daily Progress (four), the Texas Employment Commission (five), employees (one), station ads (two), the NAACP (0), the Tyler Morning Telegraph (0), Lon Morris College (0), TAB Newsletter (0), employment agencies (0), Longview Journal (0), and Broadcast Magazine (0). For 14 positions, the licensee relied solely on the following sources

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[9] We note that the licensee's explanation for its difficulties in attracting and retaining minorities lacks merit. As we have stated consistently, a station's format has no bearing on its EEO obligations. See WINFAS, Inc., 5 FCC Rcd 4902, 4906 n.7 (1990); LeFlore Communications, Inc. v. FCC, 66 FCC 2d 734, 784-785 (1975). Moreover, a change in format during the license term, station location, size, and competition from other stations are factors which would affect a station's ability to attract minorities and non-minorities equally.

and received no minority referrals: walk-ins, personal contacts, employee referrals, "previous advertising" or station ads. The licensee received 16 minorities (13 Blacks, two Hispanics, and one American Indian) among 253 applicants, including 10 minorities (nine Blacks and one American Indian) among 186 applicants for upper-level positions. Seventeen minorities[10] (14 Blacks, two Hispanics, and one American Indian) among 263 applicants were interviewed overall, including 10 minorities (nine Blacks and one American Indian) among 190 applicants. Minorities applied and were interviewed for 13 of the 57 vacancies, including 10 of the 52 upper-level vacancies. The licensee hired five minorities (three Blacks, one Hispanic and one American Indian) overall, including three minorities (two Blacks and one American Indian) for upper-level positions, during the period under review.[11] The licensee states that it maintains a "constant recruitment and screening program to attract qualified minorities...," but that there is a great demand for minority candidates, presumably among employers in the market.

17. NAACP argues that the licensee should be treated as a "recidivist," citing to the licensee's 1980 renewals for a short-term subject to reporting conditions. It questions the licensee's failure to hire no more than two minorities out of 61 minority referrals[12] for 23 jobs during the reporting year.

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[10] The licensee explains the discrepancy between the number of applicants and interviewees by stating that it held interviews for "everyone who expressed an interest in working at the station and wanted an interview." However, some interviewees, upon discovering the salary offered or job qualifications, declined to become applicants.

[11] Cherokee County, Texas, where the stations are located, has a 21.3% minority labor force (17.5% Black, 3.3% Hispanic, 0.4% Asian/Pacific Islander, 0.1% American Indian). The 1984 Annual Employment Report lists one Black among 16 full-time employees overall and upper-level job employees (6.3%). In the 1985 and 1986 reports, one Black is listed among 21 full-time employees (4.8%), including 20 upper-level job employees (5.0%). The 1987 report lists one Black among 27 full-time employees (3.7%), including 26 upper-level job employees (3.8%). In the 1988 report, two Blacks are listed among 25 full-time employees (8.0%), including one Black listed among 23 upper-level job employees (4.3%). The 1989 report lists one Black among 26 full-time employees (3.8%), including 24 upper-level job employees (4.2%). In the 1990 report, two Blacks are listed among 23 full-time employees (8.7%) and one Black is listed among 20 upper-level job employees (5.0%).

[12] The licensee's renewal applications list a total of 68 minority referrals from recruitment sources during the reporting year. However, the licensee could not indicate which, if any,

NAACP also criticizes the licensee's failure to propose specific corrective actions and states that the licensee apparently does not realize that its low minority staff representation could be caused by discriminatory screening procedures. Noting the licensee's statement that there is a great demand for qualified minorities, NAACP criticizes the licensee's failure to explain how it found only two qualified minorities to hire out of a pool of 61 minority candidates.

18. In opposition, the licensee takes exception to NAACP's allegation that it is a "recidivist." It notes that the Commission's concerns in 1980 were effectively addressed and that both its 1982 short-term renewal applications and its 1983 regular renewal applications were granted unconditionally. Accordingly, it argues that it should not be subject to "double jeopardy," and that the current record should be evaluated independently. Next, the licensee calls NAACP's assertion that it uses discriminatory screening procedures "unfounded." It notes that, in reporting the number of minority referrals, it listed the number of minorities who responded to recruitment notices and not the number of minorities who actually applied for positions. Because the licensee generally grants an interview to any referral who requests one, it does not engage in any screening process for referrals. Moreover, it argues that from March 1, 1989, through March 31, 1990, it received six minority applicants, four of whom were hired.[13] Finally, the licensee argues that its efforts comply with our EEO Rule. It states that, throughout the license term, it recruited minorities, maintained adequate records, and hired minorities for positions of responsibility. Moreover, it notes that for each year during the license term, it reported at least one Black. Acknowledging that the number of minority applicants could be increased, the licensee states that it will continue to monitor its recruitment and will add new sources as necessary.

19. There are no substantial and material questions of fact warranting designation for hearing. Astroline, supra. We find no evidence of employment discrimination. Accordingly, grant of the stations' renewal applications is warranted.

20. However, the licensee's recruitment efforts were deficient because it failed to recruit so as to attract an adequate pool of minority applicants for at least 66% (38) of its 57 full-time

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specific full-time vacancies attracted these referrals.

[13] The licensee includes part-time hires in this analysis. Our review indicates that the licensee received only four minority full-time applicants; two of whom (one Black and one American Indian) were hired.

positions. Only 13 of the 57 overall applicant and interview pools (23%) contained minorities. Only ten of the 52 upper-level applicant and interview pools (19%) contained minorities. Thus, minorities were absent from 77% of the overall pools and 81% of the upper-level pools. Notwithstanding the absence of minorities from the interview pools as noted above, it does not appear that the licensee consistently engaged in efforts to attract minorities or otherwise conducted meaningful self-assessment of its program. It failed to affirmatively recruit for 14 of its 57 hires (25%) and failed to contact minority sources for 56 of its 57 hires. Accordingly, a base forfeiture of $12,500 is warranted. See Policy Statement, supra.

21. In addition, the licensee's failure to recruit so as to attract an adequate pool of minority applicants for at least 33% of the overall and upper-level full-time positions renders its EEO efforts egregiously deficient warranting an upward adjustment of $6,250. Similarly, the combination of the above and its large number of hiring vacancies (57) warrants a further $6,250 upward adjustment with an additional $6,250 upward adjustment warranted for the large relevant minority labor force (21.3%). Given the number and types of deficiencies noted, a short term renewal is also warranted. See Policy Statement, supra. In light of the above, we will issue a Notice of Apparent Liability for $31,250, renew the licenses for a short term and impose reporting conditions.

KGVL/KIKT(FM), Greenville

22. The stations' 1990 EEO Program Report, opposition and inquiry responses reveal that there were 67 full-time vacancies, including 61 for upper-level positions, from April 1, 1987, to July 31, 1990.[14] Recruitment information was submitted for only 21 of the 67 positions.[15] For 10 positions, the licensee placed

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[14] The licensee submitted post-term recruitment information. Post-term EEO performance is not considered in the Commission's evaluation of a licensee's EEO record during a license term if that record, standing alone, is so deficient that it would merit denial of renewal or other sanctions. Rust, 73 FCC 2d at 53. Here, we will not consider the licensee's post-term recruitment because, as we state, infra, we find that the licensee's EEO record during the license term does warrant a sanction.

[15] The licensee reports 17 minority referrals from the Greenville Herald Banner (three), Greenville High School (one), East Texas State University (one), the NAACP (two), a Black principal at an elementary school (three), a local Black newspaper columnist (two), and "word of mouth and in-house staff referrals" (five). In addition, it submits letters from a member of NAACP and

ads in the Greenville Herald Banner and for an additional vacancy, the licensee used Greenville Herald Banner and presumably East Texas State University. The licensee placed an ad in Radio & Records for one position and re-hired a former employee for another position. For the eight remaining vacancies, the licensee lists only the referral source of the successful applicant. The successful candidates for these eight vacancies were referred by East Texas State University (one), the newspaper (three), and personal referrals (four). Thus, it appears that the licensee engaged in outside general recruitment for only 16 of its 67 full-time vacancies. Letters requesting minority applicants, but not listing specific vacancies, were sent periodically to Jones Personnel Service, the NAACP, the Greenville Chamber of Commerce, East Texas State University, the Texas Employment Commission, Greenville High School, and the Greenville Business and Professional Womens' Club. Although it claims that it received over a dozen minority applicants, the licensee did not provide any applicant or interview pool information for its 67 vacancies. Only one minority, an American Indian, was hired for a full-time position during the period under review.[16] This minority was employed from September 6, 1989, to October 24, 1989. The licensee notes that it participates in an internship program at a local college.

23. The NAACP criticizes the licensee's report of only five minority referrals out of a total of 75 and only two minority hires out of 36 during the reporting year. It notes that although the licensee reports participation in an internship program, it does not indicate whether any minorities have worked at the stations as part of this program.

24. In opposition, the licensee argues that it has made good faith efforts to "insure [sic] that minorities are recruited and

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the principal at Crockett Elementary School who state that they referred minority applicants for job openings.

[16] Hunt County, Texas, where the stations are located, has a 13.4% minority labor force (10.8% Black, 2.1% Hispanic, 0.2% Asian/Pacific Islander, 0.3% American Indian). The 1985 Annual Employment Report lists one Black among 16 full-time employees (6.3%) and 15 upper-level job employees (6.7%). In the 1986 report, no minorities are listed among 13 full-time employees. The 1987 report lists one American Indian among 21 full-time employees (4.8%) and 19 upper-level job employees (5.3%). In the 1988, 1989 and 1990 reports, no minorities are listed among 17, 20 and 17 full-time employees, respectively.

The licensee also employed a minority of unspecified ethnicity in 1986 who did not remain at the station long enough to be reflected on any annual employment report.

hired at the Stations." The licensee notes that its close proximity to Dallas has caused a "destabilizing impact" on its ability to recruit and hire employees as employers in Dallas are able to pay a larger salary than employers in Hunt County. As a result, the licensee faces difficulties acquiring applicants and retaining employees. The licensee notes that it has employed minorities at various times during the license term and that its "concentrated" recruitment efforts have resulted in at least a dozen minority applicants. The licensee states that in response to an absence of minority employees in 1988, it initiated personal contact with local minority groups and leaders.

25. There are no substantial and material questions of fact warranting designation for hearing. Astroline, supra. Moreover, we find no evidence of employment discrimination. Accordingly, grant of the stations' renewal applications is warranted.

26. However, the licensee's recruitment efforts were deficient because it failed to recruit so as to attract an adequate pool of minority applicants for at least 66% (44) of its 67 full-time positions. Only one of the 67 overall applicant and interview pools (1%) contained minorities. Only one of the 61 upper-level applicant and interview pools (2%) contained minorities. Thus, minorities were absent from 99% of the overall pools and 98% of the upper-level pools. Notwithstanding the absence of minorities from the interview pools as noted above, it does not appear that the licensee consistently engaged in efforts to attract minorities or otherwise conducted meaningful self-assessment of its program. It failed to affirmatively recruit for 51 of its 67 hires and failed to contact minority sources for any of its 67 hires. Accordingly, a base forfeiture of $12,500 is warranted. See Policy Statement, supra.

27. In addition, the licensee's failure to recruit so as to attract an adequate pool of minority applicants for at least 33% of the overall and upper-level full-time positions renders its EEO efforts egregiously deficient warranting an upward adjustment of $6,250. Similarly, the combination of the above and its substantial number of hiring vacancies (67) warrants a further $12,500 upward adjustment with an additional $6,250 upward adjustment warranted for the large relevant minority labor force (10.8% Black). Given the number and types of deficiencies noted, a short term renewal is also warranted. See Policy Statement, supra. In light of the above, we will issue a Notice of Apparent Liability for $37,500, renew the licenses for a short term and impose reporting conditions.

V. CONCLUSION

28. Based on the record before us, we find that no hearings are warranted and that the licensees' renewal applications should be granted. The EEO records of all of the stations warrant renewals

for less than full terms and reporting conditions. In addition, the EEO records of these stations warrant Notices of Apparent Liability in the amounts of $25,000 for Stations KGNC/KGNC-FM, $31,250 for Stations KEBE/KOOI(FM) and $37,500 for Stations KGVL/KIKT(FM).

VI. ORDERING CLAUSES

29. Accordingly, **IT IS ORDERED,** that the petition to deny filed by NAACP against the renewal applications of Stations KGNC/KGNC-FM, KEBE/KOOI(FM) and KGVL/KIKT(FM) **IS DENIED.**

30. **IT IS FURTHER ORDERED,** that the renewal applications filed by Stauffer Communications, Inc. for Stations KGNC/KGNC-FM **ARE GRANTED FOR LESS THAN A FULL TERM,** ending August 1, 1995, subject to the reporting conditions described herein and, pursuant to Section 503 of the Communications Act of 1934, as amended, 47 U.S.C. Section 503, a **NOTICE OF APPARENT LIABILITY FOR FORFEITURE** in the amount of $25,000.

31. **IT IS FURTHER ORDERED,** that the renewal applications filed by Waller Broadcasting, Inc. for Stations KEBE/KOOI(FM) **ARE GRANTED FOR LESS THAN A FULL TERM,** ending August 1, 1995, subject to the reporting conditions described herein and, pursuant to Section 503 of the Communications Act of 1934, as amended, 47 U.S.C. Section 503, a **NOTICE OF APPARENT LIABILITY FOR FORFEITURE** in the amount of $31,250.

32. **IT IS FURTHER ORDERED,** that the renewal applications filed by First Greenville Corporation for Stations KGVL/KIKT(FM) **ARE GRANTED FOR LESS THAN A FULL TERM,** ending August 1, 1995, subject to the reporting conditions described herein and, pursuant to Section 503 of the Communications Act of 1934, as amended, 47 U.S.C. Section 503, a **NOTICE OF APPARENT LIABILITY FOR FORFEITURE** in the amount of $37,500.

33. **IT IS FURTHER ORDERED,** that the licensees of Stations KGNC/KGNC-FM, KEBE/KOOI(FM) and KGVL/KIKT(FM) submit to the Commission an original and one copy of the following information on April 1, 1994, April 1, 1995, and April 1, 1996:

(a) For each report, please make two lists divided by full-time and part-time job vacancies during the twelve months preceding the respective reporting dates, indicating the job title and FCC job category, date of hire, the race or national origin, sex and the referral source of each applicant for each job and the race or national origin and sex of the person hired. This list should also noted which recruitment sources

were contacted;[17]

(b) A list of employees as of the March 1st payroll period for each annual report by job title and FCC job category, indicating full-time or part-time status (ranked from highest paid classification), date of hire, sex, and race or national origin; and

(c) Details concerning the station's efforts to recruit minorities for each position filled during the 12-month periods specified, including identification of sources used and indicating whether any of the applicants declined actual offers of employment. In addition, the licensee may submit any information it believes relevant regarding the station's EEO performance and its efforts thereunder.

34. The reports are to be filed with the Secretary of the Commission for the attention of the Mass Media Bureau's EEO Branch. Should the parties have any questions regarding this action, they may telephone the Mass Media Bureau's EEO Branch at 202-632-7069. Regarding the forfeiture proceedings for KGNC/KGNC-FM, KEBE/KOOI(FM) and KGVL/KIKT(FM), the licensees may take any of the actions set forth in Section 1.80 of the Commission's Rules, as summarized in the attachment to this Memorandum Opinion & Order and Notice of Apparent Liability. Any comments relating to the ability to pay should include those financial letters set forth in the noted attachment.

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[17] Such a list might start:
(1) News Director; Officials and Managers; Full-time
3 Applicants: 1 White female A.W.R.T.
1 Black male Urban League
1 Black female NAACP
Sources contacted: Local Newspaper, A.W.R.T., Urban League, and NAACP.
Selected: Black male (03/15/93)

35. **IT IS FURTHER ORDERED**, that the Mass Media Bureau send by Certified Mail -- Return Receipt Requested -- one copy of this Memorandum Opinion and Order and Notice of Apparent Liability to all parties.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
FEDERAL COMMUNICATIONS COMMISSION FCC 94-21
Washington, D.C. 20554

In re Applications of	)	
	)	
San Luis Obispo Limited Partnership	)	
	)	
For Renewal of Licenses for	)	BR - 900731A7
Stations KKCB/KSLY-FM	)	BRH - 900731ZH
San Luis Obispo, California	)	
	)	
Pinnacle Communications, Inc.	)	
	)	
For Renewal of Licenses for	)	BR - 900802UU
Stations KTMS/KHTY-FM	)	BRH - 900802VP
Santa Barbara, California	)	

MEMORANDUM OPINION AND ORDER
AND NOTICES OF APPARENT LIABILITY

Adopted: January 31, 1994 ; **Released:** February 1, 1994

By the Commission:

I. INTRODUCTION

1. The Commission has before it for consideration (i) license renewal applications filed for the above-captioned radio stations in California; (ii) a Petition to Deny timely filed on November 1, 1990, by the California State Conference of Branches of the NAACP and various local NAACP branches (collectively "NAACP"), the National Black Media Coalition, the Bay Area Black Media Coalition and the Los Angeles Black Media Coalition (collectively "NBMC")[1]; (iii) oppositions from the captioned broadcast stations; and (iv) the licensees' responses to staff letters of inquiry.

2. The NAACP/NBMC allege that the challenged stations violated our Equal Employment Opportunity (EEO) Rule and policies. Accordingly, both organizations request that we conduct an

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[1] The California affiliates of NBMC do not join in the Petition to Deny insofar as it relates to KKCB/KSLY-FM and KTMS/KHTY-FM. The Petition also includes challenges against other radio stations in California which will be addressed in a separate Commission order.

investigation of the stations' employment practices pursuant to Bilingual Bicultural Coalition on Mass Media, Inc. v. FCC, 595 F.2d 621 (D.C. Cir. 1978) (Bilingual), designate the renewal applications for hearing and, thereafter, deny the applications. The licensees charge that the NAACP/NBMC have presented no evidence of discrimination, that the records indicate compliance with the Commission's EEO Rule, and that unconditional renewal is warranted.

II. PLEADINGS

3. STANDING. In challenging an application pursuant to Section 309 (d) of the Communications Act, a petitioner must demonstrate party in interest status. In addition, a petitioner must, as a threshold matter, submit, "specific allegations of fact sufficient to show ... that a grant of the application would be prima facie inconsistent with [the public interest, convenience and necessity]." 47 U.S.C. § 309(d)(1); Astroline Communications Co. v. FCC, 857 F.2d 1556 (D.C. Cir. 1988) (Astroline); Dubuque T.V. Limited Partnership, 4 FCC Rcd 1999 (1989). The allegations, except for those of which official notice may be taken, must be supported by the affidavit of a person with knowledge of the facts alleged. 47 U.S.C. § 309(d)(1).

4. Submitted with the petition is a statement under penalty of perjury from Issac Garrett, president of the Santa Barbara Branch of the NAACP who states that he is a regular listener to KTMS/KHTY-FM and that he would be aggrieved if the petition is not granted. We find that the statement meets the requirements for standing. Accordingly, we hold that the NAACP has petitioner status against stations KTMS/KHTY-FM. See American Legal Foundation v. FCC, 808 F.2d 84 (D.C. Cir. 1987); see also Petition for Rule Making to Establish Standards for Determining the Standing of a Party to Petition to Deny a Broadcast Application, 82 FCC 2d 89 (1980) (citing Warth v. Seldin, 422 U.S. 490, 511 (1975)). Also submitted with the NAACP petition is a statement under penalty of perjury from Jose DeSosa, the president of the California State Conference of the NAACP. However, Mr. DeSosa does not state that he is either a listener of the challenged stations or a resident of the service areas. Filed with the NBMC petition to deny is an unsigned declaration from the chairman of the National Black Media Coalition. He is a resident of the Washington, D.C. area, and does not claim to be a listener of the challenged stations or a resident of the service areas. The Commission has previously held that without such assertions, the declaration does not satisfy the standing requirements of the Act. Accordingly, we will treat both the NAACP's pleading (against stations KKCB/KSLY-FM) and the NBMC's pleading (against stations KKCB/KSLY-FM and KTMS/KHTY-FM) as informal objections pursuant to 47 C.F.R. § 73.3584. See Michigan/Ohio Broadcast Renewals, 3 FCC Rcd 6944 (1988);

see also KDEN Broadcasting Company, 55 Rad. Reg. (P & F) 1311, 1311-12 (1984).

IV. DISCUSSION

5. PRIMA FACIE CASE. The NAACP/NBMC derived their factual allegations from the licensees' EEO programs and annual employment reports. Review of the licensees' EEO records led us initially to conclude that the NAACP/NBMC presented a prima facie case against the four stations demonstrating that unconditional grant of the renewal applications would have been inconsistent with the public interest. Section 309(d)(1) of the Communications Act of 1934, 47 U.S.C. § 309(d)(1). Astroline, supra.[2] Further inquiry was therefore necessary. See Beaumont Branch of the NAACP and the National Black Media Coalition v. FCC, 854 F.2d 501, 506 (D.C. Cir. 1988) (Beaumont); Bilingual, supra.

6. Review of the NAACP/NBMC's EEO allegations, as well as the licensees' oppositions and inquiry responses, leads us to conclude that there are no substantial and material questions of fact warranting designation for hearing. In addition, we find no evidence of employment discrimination. Thus, grant of the applications will serve the public interest. 47 U.S.C. § 309(d)(2); Astroline, supra. However, we will grant renewal with appropriate remedies and sanctions.

7. Section 73.2080 of the Commission's Rules, 47 C.F.R. § 73.2080, requires that a broadcast licensee refrain from employment discrimination and establish and maintain an affirmative action program reflecting positive and continuing efforts to recruit, employ and promote qualified women and minorities. When evaluating EEO performance, the Commission focuses on the licensee's efforts to recruit, employ and promote qualified minorities and women and the licensee's ongoing assessment of its EEO efforts. Such an assessment enables the licensee to take corrective action if qualified minorities and women are not present in the applicant pool. The Commission also focuses on any evidence of discrimination by the licensee. See Sections 73.2080(b) and 73.2080(c).

8. When the renewal application indicates an absence of discrimination and a record of adequate EEO efforts, the application is granted, if otherwise appropriate. When it fails to evidence a record of adequate EEO efforts, the Commission may

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[2] The licensees were not challenged regarding their efforts directed toward women. Nonetheless, as is our practice in all cases, we reviewed each station's EEO efforts toward women. We found them sufficient.

impose a variety of sanctions or remedies, such as reporting conditions, renewal for less than a full term, forfeiture, or a combination thereof. Further, the Commission will designate the application for hearing if the facts so warrant. Amendment of Part 73 of the Commission's Rules Concerning Equal Employment Opportunity in the Broadcast Radio and Television Services, 2 FCC Rcd 3967 (1987)(Broadcast EEO), petition for recon. pending; see also 4 FCC Rcd 1715 (1989)(request for clarification by the National Association of Broadcasters). See e.g., Beaumont, supra; Bilingual, supra.

KKCB/KSLY-FM, San Luis Obispo[3]

9. Review of the licensee's renewal applications, inquiry response and oppositions reveals 72 full-time hires, including 60 upper-level hires, over the period October 1, 1986, through November 9, 1990. The licensee failed to provide specific recruitment information concerning its 72 hires. Instead, it relied on very general representations about its recruitment efforts. In its inquiry response the licensee represented that it regularly contacted the California Employment Development Department and placed advertisements in the Telegram-Tribune for its office or sales positions from which it "generally received a number of minority and female referrals."[4] Sales positions were also announced on-air on KKCB/KSLY-FM. Announcing vacancies were occasionally advertised in Radio & Records and The Gavin Report; however, the licensee indicated that it relied mostly upon the placement office at Cuesta College and California Polytechnic State University for announcing jobs because both schools have noncommercial educational FM radio stations. For six positions -- promotions, program directors, and business managers -- the licensee did not specify its recruitment efforts.

10. In its renewal applications, KKCB/KSLY-FM reported two minority referrals from the Telegram-Tribune and one minority referral from the California Polytechnic State University during the 12 months preceding renewal, adding that there were no minority or women's organizations in the stations' service area. The licensee also reported that it did not receive minority referrals from recruitment efforts with its current employees or

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[3] San Luis Obispo Broadcasting Limited Partnership assumed control of the stations following Commission grant of the assignment applications on September 9, 1986 (BAL - 860729FS, BALH - 860729FT). The current license term ended December 1, 1990.

[4] The stations do not indicate which specific job vacancies it considers under the office and sales categories. However, we note that the licensee filled 46 positions for sales representatives, sales managers, bookkeepers, office managers and clerical jobs.

from its radio advertisements. KKCB/KSLY-FM indicated that applicant flow data as well as referral source information on its applicants were "not available." Likewise, the licensee did not provide interviewee data. Among 72 hires, 13 (18%) were minorities (six Hispanics, four Blacks, two Asian-Pacific Islanders, one American Indian) and the 60 upper-level hires included nine (15%) minorities (five Hispanics, three Blacks, one Asian-Pacific Islander).[5]

11. The NAACP/NBMC fault the licensee for not listing any minority recruitment sources on either its 1986 assignment applications or its 1990 renewal applications. In response to the licensee's statement in the renewal applications that there are no minority or women's organizations in the stations' service areas, the NAACP/NBMC question the licensee's knowledge of its community, adding that "there isn't a major community in the nation which has no minority or female organizations." The NAACP/NBMC note that despite an increase in the total staff from 18 to 22 from 1988 to 1989, minority employees decreased from three to none during the same period. They argue that the Commission should interview the terminated employees and conduct an investigation pursuant to Bilingual, supra, to determine whether KKCB/KSLY-FM's questionable EEO program and token minority employment indicate discrimination or a violation of our EEO Rule.[6]

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[5] KKCB/KSLY-FM are located in San Luis Obispo County which includes 42.1% females and 12.7% minorities (8.6% Hispanic, .9% Black, 1.9% Asian-Pacific Islander, 1.3% American Indian). In 1987, the first year the licensee filed an Annual Employment Report following the assignment, it reported a total staff of 19 employees, including two (10.5%) Hispanics and an upper-level staff of 16 employees, including one (6%) Hispanic. The 1988 Annual Employment Report reflected a full-time and upper-level staff of 18 employees, including three minorities (two (11%) Hispanics and one (5%) Asian-Pacific Islander). The 1989 Annual Employment Report included one (4.5%) American Indian on the total and upper-level staff of 22 employees. In 1990, the licensee reported a full-time and upper-level staff of 18 employees, including one Black (5.5%) employee.

[6] In their pleading, the NAACP/NBMC indicated that the minority labor force of San Luis Obispo is 14.4%. We are uncertain what Metropolitan Statistical Area (MSA) or county the NAACP/NBMC deem to be the location of the stations' service areas. However, we have determined that KKCB/KSLY-FM are located in the county of San Luis Obispo, which is not part of an MSA. Hence, the NAACP/NBMC's analysis of the licensee's compliance with the Commission's processing guidelines was apparently based on incorrect labor force data.

12. In response, the licensee notes that the NAACP/NBMC do not identify any minority organizations in San Luis Obispo despite their "conclusory observation" regarding the presence of such organizations in most major communities. The licensee sought to clarify the statement it made in the renewal applications, indicating that there are no minority or women's organizations in San Luis Obispo which serve as employment clearing centers. It explained that it searched for female and minority referral sources in the local telephone book under community service organizations and except for groups listed in the employment section, "none is the type of women's or minority organization ... the FCC has in mind ... for employment referrals." It added that it currently consults with the county Employment Development Department and intends to contact the Economic Opportunity Commission and the Private Industry Council in the county.[7]

13. The licensee also asserts that the NAACP/NBMC's assertion that the stations had no minority employees in 1989 is incorrect. According to the 1989 Annual Employment Report, one American Indian was employed in an upper-level position.[8] The licensee argues that no Bilingual investigation is needed because the stations were in substantial compliance with Commission guidelines.

14. We find no record evidence which presents a substantial or material question of fact warranting a hearing. See Astroline, supra. Nor do we find any indication of employment discrimination because the licensee attracted, interviewed and hired minorities during its tenure. Therefore, renewal of the licenses is in the public interest.

15. However, we find KKCB/KSLY-FM's overall recruitment efforts deficient because it failed to recruit so as to attract an adequate pool of minority applicants for at least 66% (47 jobs) of its 72 full-time vacancies. The record indicates that minorities were in only 13 (18%) of the licensee's overall applicant and interview pools. Moreover, only nine (15%) of the 60 upper-level applicant and interview pools included minorities. Thus, it appears minorities were absent from 82% of the overall applicant and interview pools and 85% of the upper-level applicant and interview pools. Notwithstanding the absence of minorities from the applicant and interview pools as noted above,

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[7] The licensee attached several pages of the local telephone directory to its opposition. We note that the three referral sources identified by the licensee were listed under "Employment" in the telephone directory.

[8] Hispanic employment dropped from two upper-level positions in 1988, to no Hispanic employees in 1989.

it does not appear that the licensee consistently engaged in efforts to attract minorities or otherwise conducted meaningful self-assessment of its program.[9] In this regard, it appears that KKCB/KSLY-FM failed to identify and use minority-specific organizations to attract qualified minority applicants. Accordingly, a base forfeiture of $12,500 is warranted. See Policy Statement, FCC# 94-27 (Adopted January 31, 1994).

16. In addition, the licensee's failure to recruit so as to attract an adequate pool of minority applicants for at least 33% of the overall and upper-level full-time positions renders its EEO efforts egregiously deficient warranting an upward forfeiture adjustment of $6,250.[10] Similarly, the combination of the above and KKCB/KSLY-FM's substantial number of hires -- almost four times the size of its full-time staff -- warrants a further upward adjustment of $12,500 for a total forfeiture of $31,250. Given the number and types of deficiences noted, a short term renewal is also appropriate. See Policy Statement, supra.

17. However, we note that the licensee hired minorities during the review period at a rate equal to 100% of the minority representation in San Luis Obispo County for the period October 1, 1986, to November 9, 1990. Thus, a $6,250 downward adjustment in the forfeiture is appropriate. See Policy Statement, supra. Based on the foregoing, we will renew the licenses for a short term, impose reporting conditions, and issue a Notice of Apparent Liability for $25,000.

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[9] While the Commission has held that general recruitment sources can be useful, productive EEO tools, we also have held that licensees will need to broaden their efforts to include minority specific sources if such general sources are not productive. See South Carolina Renewals, 5 FCC Rcd 1704, 1709 n. 8 (1990); see also In re WINFAS, et al., 5 FCC Rcd 4902 (1990). Such an assessment would have been appropriate in the instant case. In this regard, we find the licensee's review of the telephone directory for referral sources somewhat limited and admonish the licensee to make more extensive efforts to ascertain new recruitment contacts. We are also concerned because it appears the licensee failed to explore new recruitment options until its renewal applications were challenged by the NAACP/NBMC. Our EEO Rule requires ongoing self-assessment throughout the license term.

[10] It is noteworthy that the licensee's 1989 and 1990 Annual Employment Reports do not reflect Hispanics on the full-time staffs.

KTMS/KHTY-FM, Santa Barbara[11]

18. Review of KTMS/KHTY-FM's renewal applications, oppositions and inquiry responses reveals that the stations made 56 overall, including 51 upper-level, full-time hires from November 1987 through July 1990. In its renewal applications the licensee indicated use of the following recruitment sources and minority referrals therefrom: Santa Barbara News Press (1), University of California Santa Barbara (2), trade publications and station announcements (1), and current employees (2). Additional recruitment efforts included periodic contacts with one state employment agency, three educational institutions, six minority/female organizations and seven publications (including one trade magazine). According to the licensee, schools and newspapers were its most productive, therefore, most frequently used sources.

19. For 18 (32%) of the 56 positions, the licensee announced the vacancies among its current employees and did not conduct outside recruitment. It used prior employees as recruitment for three additional jobs; Radio & Records for three further jobs; Heritage Professional Search for one hire; and Santa Barbara News Press for one job. For the remaining 30 vacancies, the licensee used two sources for each of five positions[12]; three sources for each of three jobs[13]; four sources for each of nine vacancies[14]; five

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[11] Pinnacle Communications, Inc. acquired the licenses for KTMS/KHTY-FM following Commission grant of the transfer applications on March 6, 1987 (BTC - 870226ED, BTCH - 870226EE). Consummation was effective on November 24, 1987. Currently pending are applications to assign the licenses to Atmor Properties, Inc. (BAL - 930727EB, BALH - 930727EC).

[12] Recruitment efforts included current employees, Heritage Professional Search, Broadcast Magazine, UCSB (University of California at Santa Barbara) Career Center, Radio & Records, and an unidentified trade magazine.

[13] Along with previously mentioned sources, the licensee used the Snelling Employment Agency, Goleta Sun, Carpenteria Herald (both surburban papers), SBCC (Santa Barbara City College) Student Services and Westmont College.

[14] Contacted sources included, among others, SBCC Student Services, Westmont College, Job Network, Access One (an employment referral agency), sales consultants, a trade magazine, Ventura Star Free Press, Montecito Life (a weekly paper), and UCSB Career Center.

sources for each of five positions[15]; eight sources for each of five hires[16]; nine sources for each of two positions[17]; and eleven sources for one job.[18] Overall, the licensee reported 196 applicants, including 19 (10%) minorities (15 Hispanics, three Asian-Pacific Islanders, one Black). Upper-level applicants numbered 179, including 13 (7%) minorities (11 Hispanics and two Asian-Pacific Islanders). Nine (16%) of 56 applicant pools were minority inclusive and Hispanics were present in each of the nine pools. Six (11.7%) of the minority inclusive pools were among the 51 upper-level applicant pools. The record indicated 74 interviewees, including five (7%) minorities for six (11%) overall and three (6%) upper-level interview pools (four Hispanics and one Black). The licensee hired four (7%) minorities (three Hispanics and one Black) for four vacancies and one (2%) Hispanic for an upper-level position.[19]

20. The NAACP/NBMC argue that although the licensee used the minority organizations it promised to use in its assignment applications, those recruitment sources referred only six

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[15] Recruitment efforts included current employees, a trade publication, schools, Broadcast Yearbook, a "listener", a general circulation paper and three additional publications.

[16] Sources contacted included, among others, the Private Industry Council, the NAACP, Afro-American Community Services, NOW, Radio Chicano Club, and several general circulation publications.

[17] The vacancies were announced to one trade magazine, one government employment agency, three general circulation publications and four minority/female organizations.

[18] Recruitment sources included two employment agencies, four general circulation papers and five minority/female organizations.

[19] KTMS/KHTY-FM are located in the Santa Barbara-Santa Maria-Lompoc, California Metropolitan Statistical Area (MSA) which includes 43.3% females and 23% minorities (2.2% Black, 17.3% Hispanic, 2.8% Asian-Pacific Islander, .7 American Indian). In its 1988 Annual Employment Report (which the licensee amended in its opposition) the licensee reported one (4%) Asian-Pacific Islander among 28 employees and one (4%) Asian-Pacific Islander among 25 upper-level employees. The 1989 Annual Employment Report included two (8%) Hispanics and one (4%) Asian-Pacific Islander among 26 employees and one (4%) Hispanic and one (4%) Asian-Pacific Islander among 24 upper-level employees. The 1990 Annual Employment Report indicated a full-time staff of 25 employees, including one (4%) Hispanic and one (4%) Asian-Pacific Islander, and an upper-level staff of 23 employees including one (4%) Asian-Pacific Islander.

minority applicants in the renewal year (i.e., the twelve months preceding renewal, July 1, 1989, to June 30, 1990). The NAACP/NBMC charge that the licensee's hire of only two minorities out of 31 overall and 28 upper-level renewal year hires (as reported reported in the renewal applications) is the result of its failure to effectively recruit and, subsequently, hire minorities.

21. In response, the licensee stated that "it has contacted numerous area organizations ... in an attempt to reach qualified minority applicants." However, based on the stations' records and the recollection of former (although unidentified) employees, the licensee stated that "these contacts ... were largely unsuccessful in obtaining referrals."[20] The licensee added that it incorrectly indicated two minority hires among 31 total hires in its renewal applications. Although it employed two minorities during most of the renewal year, it stated that none were actually hired during this period, although employment offers were extended, and rejected, by five minorities.[21]

22. KTMS/KHTY-FM add that their hiring difficulties are also attributable to other factors. They cite their proximity to larger, better-paying radio markets as competition for well-qualified minority candidates. Further, the licensee states that it is difficult to attract Hispanics who are fluent in English and have completed four years of high school.[22] It argues that

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[20] To illustrate, the licensee indicated that it made "extraordinary" efforts to hire a Hispanic for an office manager vacancy, which opened in May 1990, by posting notices at universities, Hispanic owned businesses and contacting Hispanic community leaders. It stated that those efforts attracted just one Hispanic applicant who, due to pregnancy, declined the job. Ultimately, the position was filled by an Hispanic who was referred by a former employee. The licensee adds that "it could not operate effectively were it to make [this] kind of extraordinary effort[s] ... for each opening. This is especially true with regard to its sales and announcing positions which are even more difficult to fill given the specialized knowledge and skills required for those jobs."

[21] In this context, the licensee did not indicate the race or national origin of the minority applicants who were offered jobs.

[22] Based on Hispanic population statistics issued by the Santa Barbara County Cities Area Planning Council, the licensee indicated that only 63% of Hispanics over age 25 have completed high school (versus 79% of the total Santa Barbara population), and that 29% of Hispanics over age 18 do not speak English or speak it with difficulty.

most radio jobs require a high school education and many Hispanics are inadequately trained due to their background in agriculture. According to the licensee, the minority workforce must be considered against these factors.[23]

23. In their reply to the opposition, the NAACP/NBMC state that contrary to the licensee's assertion that it contacted the Santa Barbara Branch of the NAACP and Afro-American Community Services, both organizations report that no job announcements were received from KTMS/KHTY-FM after their acquisition by Pinnacle Communications, Inc.[24] They conclude that the Commission's review of the inquiry data will determine whether the licensee contacted recruitment sources commensurate with its job openings.

24. Our review of the record discloses no substantial and material questions of fact warranting designation for hearing. See Astroline, supra. We also find no evidence of discrimination. Accordingly, renewal of the licenses is appropriate.

25. However, we find KTMS/KHTY-FM's recruitment efforts deficient because it failed to recruit so as to attract an adequate pool of minority applicants for at least 66% (37 jobs) of its 56 full-time vacancies. Our investigation revealed that minorities were present in only nine (16%) of the licensee's 56 overall applicant pools and six (12%) of its 51 upper-level

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[23] We find the licensee's arguments regarding the limiting factors of education, language and agricultural background, as impediments to its recruitment efforts, without merit. These factors and their effect upon minority employment are similar to those articulated in Wards Cove Packing Co. v. Antonio, 109 S. Ct. 2115 (1989) (Wards Cove). Therein, the court ruled that "such factors (i.e., comparison between the racial composition of the qualified persons in the labor market and the persons holding at-issue jobs) must be considered in statistical evaluations of station employment." The Commission has reviewed the applicability of Title VII to our EEO responsibilities before and found that our oversight in this area goes beyond the factors in Title VII that may serve as limits on anti-discrimination efforts. See South Carolina Renewals, 5 FCC Rcd 1704, 1709 n. 4 (1990); WXBM-FM, 6 FCC Rcd 4782, 4786 n. 13 (1991); Ogden Broadcasting, 7 FCC Rcd 1895 (1992). Therefore, because our EEO obligations flow, not from Title VII, but from the Communications Act of 1934, 47 U.S.C. Section 307(a) and (d) and 309(a), we find that Wards Cove does not limit our analysis of a licensee's efforts to attract minority applicants.

[24] They add that apparently the licensee did not know that the Afro-American Community Services has been "supplanted" by the Alliance for Community Development.

applicant pools. Further, minorities were included in only six (11%) of the 56 overall interview pools and three (6%) of the 51 upper-level interview pools. Notwithstanding the absence of minorities from the applicant and interview pools as noted above, it does not appear that the licensee consistently engaged in efforts to attract minorities or otherwise conducted meaningful self-assessment of its program. In this regard, for 18 jobs -- nearly one-third of its hires -- KTMS/KHTY-FM failed to recruit with either general or minority-specific organizations. Accordingly, a base forfeiture of $12,500 is warranted. See Policy Statement, supra.

26. Additionally, the licensee's failure to recruit so as to attract an adequate pool of minority applicants for at least 33% of the overall and upper-level full-time positions indicates egregious misconduct justifying an upward forfeiture adjustment of $6,250. Second, a further upward adjustment of $6,250 is appropriate given the large number of hiring opportunities (56) Third, the combination of the above and the location of the stations in a metropolitan area which includes a large minority labor force (23%) justifies an upward adjustment of $6,250. Under these circumstances, a short term is also warranted. See Policy Statement, supra. In light of the above, we will renew the licenses for a short term subject to reporting conditions and issue a Notice of Apparent Liability for Forfeiture for $31,250.[25]

V. CONCLUSION

27. Upon review of the record, we find that grant of the renewal applications is in the public interest. However, we will grant the renewal applications for KKCB/KSLY-FM and KTMS/KHTY-FM for less than a full term, ending December 1, 1995. To ensure that better efforts are taken with respect to their EEO programs, we will impose reporting conditions on both licensees. Further, by this Order, we will issue the following Notices of Apparent Liability: KKCB/KSLY-FM - $25,000; KTMS/KHTY-FM - $31,250.

VI. ORDERING CLAUSES

28. Accordingly, **IT IS ORDERED**, that the informal objections filed by the California State Conference of Branches of the NAACP and the National Black Media Coalition against the renewal applications of KKCB/KSLY-FM **ARE DENIED**.

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[25] In view of the pending assignment applications for KTMS/KHTY-FM, we note that upon grant of those applications, reporting conditions will follow the licenses as a matter of law and pass automatically to the assignee. See Woolfson Broadcasting, Inc., 4 FCC Rcd 6160 (1989).

29. IT IS FURTHER ORDERED, that the Petition to Deny filed by the California State Conference of Branches of the NAACP and its Santa Barbara Branch against the renewal applications of KTMS/KHTY-FM **IS DENIED**.

30. IT IS FURTHER ORDERED that the informal objection filed by the National Black Media Coalition against the renewal applications of KTMS/KHTY-FM **IS DENIED**.

31. IT IS FURTHER ORDERED, that the license renewal applications for Stations KKCB/KSLY-FM **ARE GRANTED FOR A SHORT TERM** ending December 1, 1995, subject to the reporting conditions specified herein, and pursuant to Section 503, a **NOTICE OF APPARENT LIABILITY FOR FORFEITURE** in the amount of $25,000.

32. IT IS FURTHER ORDERED, that the license renewal applications for Stations KTMS/KHTY-FM **ARE GRANTED FOR A SHORT TERM** ending December 1, 1995, subject to the reporting conditions specified herein, and pursuant to Section 503, a **NOTICE OF APPARENT LIABILITY FOR FORFEITURE** in the amount of $31,250.

33. IT IS FURTHER ORDERED, that the licensee of Stations KKCB/KSLY-FM and KTMS/KHTY-FM submit to the Commission an original and one copy of the following information on August 1, 1994, August 1, 1995, and August 1, 1996:

(a) For each report, please make two lists divided by full-time and part-time job vacancies during the twelve months preceding the respective reporting dates, indicating the job title and FCC job category, date of hire, the race or national origin, sex and the referral source of each applicant for each job and the race or national origin and sex of the person hired. The list should also note which recruitment sources were contacted;[26]

(b) A list of all employees as of the July 1, 1994,

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[26] Such a list might start:

1) News Director: Officials and Managers; Full-time.

3 Applicants:	1 White female	A.W.R.T
	1 Hispanic male	National Hispanic Media Coalition
	1 Black female	NAACP

Sources contacted - Local newspaper, A.W.R.T., National Hispanic Media Coalition and NAACP

Selected - Hispanic male (08/19/93)

payroll period for the first report and as of the July 1, 1995, and July 1, 1996, payroll periods for the second and third reports by job title and FCC job category, indicating full-time or part-time status (ranked from highest paid classification), date of hire, sex and race or national origin; and

(c) Details concerning the station's efforts to recruit minorities for each position filled during the 12-month periods specified, including identification of sources used and indicating whether any of the applicants declined actual offers of employment. In addition, the licensee may submit any information it believes relevant regarding the station's EEO performance and its efforts thereunder.

34. IT IS FURTHER ORDERED, that the Mass Media Bureau send by Certified Mail -- Return Receipt Requested -- one copy of this Memorandum Opinion and Order and Notices of Apparent Liability to all parties.

35. The reports are to be filed with the Acting Secretary of the Commission for the attention of the Mass Media Bureau's EEO Branch.

36. Should you have any questions regarding this action or require further information concerning employment reports, you may call the Mass Media Bureau's EEO Branch at (202) 632-7069. With respect to the forfeiture proceeding, the licensees may take any of the actions set forth in Section 1.80, as summarized in the attachment to this Order. Any comments concerning the ability to pay should include those financial items set forth in the attachment.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC 94-22

In the Matter of

Adelphia Communications
Corporation's Unit 305
Palm Beach County, Florida

MEMORANDUM OPINION AND ORDER
AND NOTICE OF APPARENT LIABILITY

Adopted: January 31, 1994 **Released:** February 1, 1994

By the Commission: Commissioner Quello concurring and issuing a statement; Commissioner Duggan issuing a separate statement.

1. This Order constitutes a Notice of Apparent Liability for a forfeiture issued pursuant to Section 634 of the Communications Act of 1934, as amended, 47 U.S.C. 554.

2. Section 76.73(a) of the Commission's Rules, 47 C.F.R. Section 76.73(a), states that no person shall be discriminated against in employment by a cable operator because of race, color, national origin, age or sex. Section 76.73(b)(5) of the Commission's Rules, 47 C.F.R. Section 76.73(b)(5), requires cable operators to: "[c]onduct a continuing review of job structure and employment practices and adopt positive recruitment, training, job design, and other measures needed to ensure genuine equality of opportunity...." Section 76.75 states that an employment unit's Equal Employment Opportunity (EEO) program should reasonably address itself to a number of areas, including: recruitment of minorities and women whenever there is a job vacancy; evaluation of turnover; promotions; use of female and minority entrepreneurs; and an analysis of the results of EEO efforts. These provisions directly implement Section 634(c) of the Communications Act.

3. On February 25-26, 1993, an EEO audit of Adelphia Communications Corporation's (Adelphia) Unit 305, Palm Beach County, Florida, revealed that Adelphia had not complied with the rule provisions noted above for the years covered by the 1991-1993 Annual Employment Reports.[1] Review of documents assembled by Adelphia and interviews with Adelphia officials as well as

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[1] Accordingly, inter alia, we hereby rescind the unit's 1991 certification.

review of an inquiry response submitted by Adelphia subsequent to the audit indicated that: the unit had few minorities in the applicant pools for upper-level positions, especially in the area of sales; the unit hired few minorities for upper-level positions; almost all of the Blacks employed in upper-level positions were among the lowest paid upper-level employees at the unit; the unit interviewed and hired no minorities for certain groups of jobs and minorities were absent from various departments and facilities; and, for a significant number of lower-level positions, the unit failed to hire minorities despite their overwhelming majority in the applicant pool. The unit did not have a program to ensure that promotions were made in a non-discriminatory manner; did not encourage minority and female entrepreneurs to conduct business with all parts of its operation; and failed to keep complete and accurate records of its EEO efforts.

4. In view of the foregoing, it appears that Adelphia repeatedly violated the statutory rule provisions cited above. Pursuant to Section 634(f)(2) of the Communications Act, the maximum forfeiture for extensive violations from 1991 to the date of notification of the potential violations, February 26, 1993, is $90,000, i.e., $500 multiplied by 180, the maximum number of days prior to notification by the Commission of a potential violation for which a cable operator can be liable. In addition, pursuant to Section 634(f)(2) of the Communications Act, Adelphia may be fined $500 per day without limit for violations occurring after it was notified by the Commission of its potential violations. In this case, that amount would equal $31,500, i.e., $500 multiplied by the number of days between February 26, 1993, the date of notification of the violations, and April 30, 1993, the date Adelphia states that it imposed a freeze on all new hires, transfers, promotions and terminations until a centralized personnel system could be implemented.

5. After reviewing the facts in this case and the requirements of Section 1.80, we have concluded that a forfeiture of $121,500 is appropriate here. There is evidence that Adelphia has engaged in employment practices that had an adverse affect on minorities.[2] Accordingly, pursuant to Section 634(f)(2) of the Communications Act of 1934, as amended, 47 U.S.C. Section 554(f)(2), Adelphia is hereby advised of its apparent liability for forfeiture of $121,500 for its repeated failures over a period of 180 days prior to notification and a period of 63 days subsequent to notification to comply with Sections 76.73 and 76.75 of the Commission's rules in the manner described above.

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[2] In our April 15, 1993, inquiry letter, we noted that there was evidence of discriminatory practices at the unit. The unit did not dispute this allegation in its May 17, 1993, response.

The amount was reached after consideration of the factors set forth in Section 634 of the Communications Act and Section 1.80 of the Commission's Rules.

6. Accordingly, **IT IS ORDERED** that the Mass Media Bureau send by Certified Mail -- Return Receipt Requested -- one copy of this Memorandum Opinion and Order and Notice of Apparent Liability to all parties.

7. In regard to the forfeiture proceeding, Adelphia may take any of the actions set forth in Section 1.80 of the Commission's Rules, as summarized in the attachment to this Memorandum Opinion and Order and Notice of Apparent Liability. Any comments relating to its ability to pay should include those financial items set forth in the noted attachment.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Concurring Statement of Commissioner James H. Quello

In the Matter of Adelphia Communications Corporation's Unit 305 Palm Beach County, Florida

As set forth in greater detail in my Separate Statement on the Policy Statement on EEO Forfeiture Guidelines, I support use of monies collected in connection with the enforcement of our EEO rule for a purpose more directly related to the rule. The $121,500 we impose in this case would be better spent in directly funding the training, education and placement of minorities and women in broadcast or cable positions. Moreover, such a program would assist broadcasters and cable operators by adding new, experienced talent to the pool of minority and female applicants. Finally, such a program would strike a balance between the need to enforce our EEO rule, with the need to support broadcasters and cable operators in their efforts to employ qualified minorities.

Separate Statement
of
Commissioner Ervin S. Duggan

In the Matter of Adelphia Communications Corporation's Unit 305 Palm Beach County, Florida

I agree with the Commission's decision to issue a significant sanction in this case. The EEO violations uncovered in our investigation of Adelphia's practices in Palm Beach County reflect the near absence of any EEO effort and even suggest that outright discrimination may have occurred.

I write separately, as one of my last acts as a Commissioner, to suggest that the Commission in the future would do well to consider a more creative, less rigid, remedial approach to broadcast and cable EEO enforcement. Specifically, I believe that the Commission should seek statutory authority to use consent decree-style enforcement methodology in this vitally important area. How might such an approach work in practice? Licensees or regulated companies admitting to EEO violations would, in lieu of a substantial forfeiture, be given an opportunity by the FCC to place substantial amounts of money in escrow to be used to pursue a detailed, concrete program of affirmative action at their facilities. As a condition for participating in the program, the Commission would require each affected company to (1) submit a detailed, written affirmative action plan to the Commission, (2) agree to document and report on the creation of the escrow account and the disbursement of funds in support of the program, and (3) present concrete data on recruitment and hiring efforts for a period of several years.

I believe that such a positive approach would do more to boost meaningful EEO performance among the entities we regulate than our present system of exclusively punitive sanctions. It would create positive incentives to improve minority hiring practices—and would ensure that real dollars would be put into minority recruitment programs.

Adelphia's management indicated a willingness to consider such an arrangement, and I have frequently discussed such a policy with my colleagues over the last two years. Ambiguities in the forfeiture section of the Communications Act, however, leave unclear whether we have the authority to adopt such a course without specific action by Congress. I would urge the Commission to seek such authority and to think carefully about embarking on a more creative and affirmative approach to improving the hiring of women and minorities in the broadcasting and cable industries.

Our current policy is all stick, no carrot; it pours forfeiture dollars into the general treasury, rather than into positive programs of recruitment. It creates violators—losers—but no winners. Surely we can do better. I hope that Chairman Hundt and my erstwhile colleagues will pursue this matter, which may seem small, but which in my judgment could produce large and worthwhile results.

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 94-23

In re Applications of	)	
	)	MM Docket No. 94-10
The Lutheran Church/	)	File Nos. BR - 890929VC
Missouri Synod	)	BRH - 890929VB
	)	
For Renewal of Licenses	)	
of Stations KFUO/KFUO-FM	)	
Clayton, Missouri	)	

HEARING DESIGNATION ORDER
AND NOTICE OF OPPORTUNITY FOR HEARING
FOR FORFEITURE

Adopted: January 31, 1994 ; **Released:** February 1, 1994

By the Commission: Commissioner Quello concurring and issuing a statement.

I. INTRODUCTION

1. The Commission has before it for consideration: (i) license renewal applications filed for the above-captioned radio stations in Clayton, Missouri; (ii) a Petition to Deny timely filed on January 2, 1990, by the Missouri State Conference of Branches of the NAACP and various local NAACP branches (collectively "NAACP") against the renewal applications of the captioned broadcast stations[1]; (iii) the opposition to the petition filed by the licensee on February 23, 1990; (iv) the licensee's responses to staff letters of inquiry; (v) the NAACP's reply comments and additional pleadings; and (vi) the licensee's responses to NAACP's comments and additional pleadings.[2]

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[1] The renewal applications of several other petitioned Missouri stations have been addressed in a separate Commission order.

[2] Although Section 1.45 of the Commission's rules, 47 C.F.R. § 1.45, does not authorize the additional pleadings filed by either party subsequent to the NAACP's reply pleadings, we will consider the submissions in this case as part of our overall public interest analysis. 47 U.S.C. § 309(a).

2. STANDING. In challenging an application pursuant to Section 309(d) of the Communications Act, a petitioner must demonstrate party in interest status. In addition, a petitioner must, as a threshold matter, submit, "specific allegations of fact sufficient to show ... that a grant of the application would be prima facie inconsistent with [the public interest, convenience and necessity]. 47 U.S.C. § 309(d)(1); Astroline Communications Co. v. FCC, 857 F.2d 1556 (D.C. Cir. 1988) (Astroline); Dubuque T.V. Limited Partnership, 4 FCC Rcd 1999 (1989). The allegations, except for those of which official notice may be taken, must be supported by the affidavit of a person with knowledge of the facts alleged. 47 U.S.C. § 309(d)(1).

3. Along with its petition, the NAACP submitted a sworn declaration from Rev. James F. DeClure, president of the St. Louis Branch of the NAACP who indicates that he listens to stations KFUO/KFUO-FM and that he would be seriously aggrieved if the petition is not granted. Accordingly, we find that the NAACP has standing to petition KFUO/KFUO-FM's renewal applications.

4. EEO RULE. Section 73.2080 of the Commission's Rules, 47 C.F.R. § 73.2080, requires that a broadcast licensee refrain from employment discrimination and establish and maintain an affirmative action program reflecting positive and continuing efforts to recruit, employ and promote qualified women and minorities. When evaluating EEO performance, the Commission focuses on the licensee's efforts to recruit, employ and promote qualified minorities and women and the licensee's ongoing assessment of its EEO efforts. Such an assessment enables the licensee to take corrective action if qualified minorities and women are not present in the applicant pool. The Commission also focuses on any evidence of discrimination by the licensee. See Sections 73.2080(b) and 73.2080(c).

5. When the renewal application indicates an absence of discrimination and a record of adequate EEO efforts, the application is granted, if otherwise appropriate. When it fails to evidence a record of adequate EEO efforts, the Commission may impose a variety of sanctions or remedies, such as reporting conditions, renewal for less than a full term, forfeiture, or a combination thereof. Further, the Commission will designate the application for hearing if the facts so warrant. Amendment of Part 73 of the Commission's Rules Concerning Equal Employment Opportunity in the Broadcast Radio and Television Services, 2 FCC Rcd 3967 (1987) (Broadcast EEO), petition for recon. pending; see also 4 FCC Rcd 1715 (1989) (request for clarification by the National Association of Broadcasters). See e.g., Beaumont Branch of the NAACP and the National Black Media Coalition v. FCC, 854 F.2d 501, 506 (D.C. Cir. 1988); Bilingual Bicultural Coalition on Mass Media, Inc. v. FCC, 595 F.2d 621 (D.C. Cir. 1978).

6. For the reasons discussed in detail, infra, we find that an

evidentiary hearing is needed to resolve substantial and material questions of fact as to whether The Lutheran Church/Missouri Synod has the requisite qualifications to remain a Commission licensee. The issues designated for hearing concern KFUO/KFUO-FM's violation of our EEO Rule and possible misrepresentation or lack of candor.

II. BACKGROUND

7. On September 29, 1989, The Lutheran Church/Missouri Synod (hereinafter "the licensee") filed applications to renew the licenses of stations KFUO/KFUO-FM,[3] Clayton, Missouri. The licensee indicated that when vacancies occured, its policy was to seek out qualified minority and female applicants. It stated, "We deal only with employment services, including state employment agencies, which refer job candidates without regard to their race, color, religion, national origin or sex. We contact the various employment services and actively seek female and minority referrals ... " The licensee claimed to have hired a total of six persons, two white males and four white females during the renewal year.[4] The renewal applications were signed by Ralph A. Bohlman, president of The Lutheran Church - Missouri Synod.

8. Prior to receipt of the NAACP's petition, we requested that the licensee supplement its applications with details about recruitment efforts, as well as minority and female referrals because this data was originally omitted from the renewal applications. In its supplement, filed December 29, 1989, the licensee indicated that it sent general recruitment letters to three employment/personnel agencies and six educational institutions during the license term, but received no minority referrals.[5] It described some minority specific recruitment efforts taken in the last several months of the license term, reiterating that it hired six persons, all for upper-level

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[3] KFUO(AM) programs a religious format; KFUO(FM) has a classical music format. The license term ended February 1, 1990.

[4] Appended to the renewal applications was a completed acknowledgement form letter, dated July 21, 1989, from one of the licensee's referral sources indicating receipt of a recruitment letter from KFUO/KFUO-FM.

[5] We note that the sample recruitment letter, dated July 18, 1989, and appended to the supplement, refers only generally to job openings at KFUO(FM). The letter does not reference any specific types of vacancies at the station, nor does it indicate the type of skills or educational level required for any jobs at the station. The licensee states therein that it seeks minority and female referrals and will contact the source as job openings occur.

positions, from October 1, 1988, to September 30, 1989.[6]

9. In its January 2, 1990, petition, the NAACP asserted that KFUO/KFUO-FM's EEO program failed to indicate contact with minority organizations, media, or schools. Further, it charged that the stations did not indicate any minority and female referrals or hires. The NAACP noted that the only full-time minority employee was an Hispanic -- a minority group "not represented in the market in significant numbers." Asserting "self-evident" EEO non-compliance by KFUO/KFUO-FM, the NAACP advocated designation of the renewal applications for hearing.

10. In its opposition, the licensee argued that it had used multiple referral sources during the license term, not just employment agencies. Nevertheless, the licensee indicated several factors which "militat[e] against widespread employment recruitment at KFUO." First, it receives a large number of applications from write-in candidates due to the specialized nature of the program formats (religious and classical music). Second, because the stations' studios are located on the campus of Concordia Seminary, it has a reciprocal arrangement with the seminary to provide broadcast training to seminary students or their spouses in exchange for rent free studios. KFUO/KFUO-FM stated that seminary students and their spouses fill non-specialized positions (jobs which do not require theological training or classical music expertise).[7] Third, according to the licensee, management turnover has made it difficult to maintain a consistent recruitment program.

11. Regarding hires, the licensee contended that it employed minorities at a rate equal to the availability of those who possess the skills needed to work at the stations. The licensee explained that its formats require that nearly all upper-level positions (i.e., the majority of its jobs) be filled with persons with classical music expertise or theological training. It submitted that only 5% of Lutherans in the St. Louis area are minorities and those with "Lutheran training" constitute 2% of

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[6] The St. Louis Missouri-Illinois Metropolitan Statistical Area (MSA), where the stations are located, includes 43.2% females and 15.6 minorities (14.1% Black, .8% Hispanic, .5% Asian-Pacific Islander and .2% American Indian).

[7] The record reveals that seminary spouses (white, female) were hired for three full-time positions (two office/clerical, one professional). One seminary student (white, female) was hired for a full-time office/clerical vacancy. Thirteen seminary students were hired for part-time announcing positions (12 white males, one white female). Also, the spouse of a seminary student was hired as a part-time secretary (white, female). These hires occurred over the period October 1, 1986, through October 31, 1989.

the St. Louis population. The licensee stated that a recent audit of KFUO(FM)'s listeners revealed that 3.7% (or 2,693) are Black. It reasoned that the FM station's Black audience (which it calculated as .1% of the overall St. Louis population), represented the total local availability of minorities with classical music training.

12. To evaluate further the stations' EEO efforts, we sent a letter to KFUO/KFUO-FM on January 4, 1990, requesting the number of hires from October 1, 1986, to October 1, 1989, as well as the referral sources used to recruit for each position, the number of interviewees for each job (including gender, race or national origin), as well as the referral source, gender, race or national origin of the successful candidate. On February 23, 1990, the licensee indicated that it hired a total of 14 persons (10 full-time, 4 part-time) during the renewal year -- not six as it originally reported on the renewal applications -- but did not acknowledge or otherwise address the discrepancy between the hire data on its renewal applications and that in the inquiry response. Overall, it filled 28 full-time, including 24 upper-level, vacancies during the three-year period, including one upper-level Hispanic hire.[8] For its 28 jobs, the stations reported 51 interviewees, including one Hispanic interviewee. For 16 of the 28 hireees, the licensee indicated that their resumes were on file with the stations.[9] KFUO/KFUO-FM failed to identify recruitment contacts for each position, and the gender, race or national origin of those interviewed.

13. We sent a further inquiry letter on April 23, 1992, requesting the licensee to state specifically when it contacted referral sources for its vacancies during the three-year period. Also, we requested recruitment and hire data on each position filled between November 1, 1989, through January 31, 1990, the end of the license term.

14. By letter of May 12, 1992, the licensee answered our inquiry stating that it doesn't "use outside recruitment sources for <u>every</u> opening at the stations," because of the many unsolicited applications received and because the rent-free agreement with Concordia Seminary requires that it make special efforts to employ seminary students and their spouses "without resort to outside recruitment sources." Other than its regular contact

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[8] The resume for the Hispanic hiree was on file.

[9] Of the 16 hirees whose resumes were on file or who were referred by the staff, 12 hirees were for sales positions at KFUO-FM. The stations indicate that during the license term the hirees whose resumes were on file came directly from the International Center of the Lutheran Church/Missouri Synod, or through referrals by the Center/stations' employees.

with The International Center of the Lutheran Church/Missouri Synod (Lutheran Church headquarters), it appears that for eight (29%) of 28 jobs filled from October 1, 1986, to October 31, 1989, the stations contacted one to three outside recruitment sources,[10] and for three (75%) of four vacancies filled between November 1, 1989, and January 31, 1990, it contacted from one to seven outside referral sources.[11]

15. In a third letter to KFUO/KFUO-FM, we asked about the stations' failure to address the discrepancy between the renewal year hires reported on their renewal applications and those reported on their inquiry responses. By letter of July 13, 1992, the licensee provided a rationale for the discrepancy, stating that it had a "net gain" of six persons during the period October

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[10] For three of the eight positions (program director (AM) and two general managers (AM)) the licensee contacted The Lutheran Witness. For an additional general manager vacancy (FM), the licensee contacted The Lutheran Witness and Broadcasting Magazine. An announcer (AM) and a sales vacancy (FM) were recruited with the St. Louis Broadcast Center. A sales job (FM) was announced at the church headquarters and advertised in Broadcasting Magazine. A final position, director of audio resources (AM), was advertised in Lutheran publications.

The Lutheran Employment Project, a minority employment clearinghouse, was generally contacted once in 1989 for referrals for sales jobs, but it was never notified of a specific sales opening. Additionally, the licensee indicated that it has contacted a Black Lutheran minister every year since 1988 to request referrals for its file. It stated that the two or three individuals referred by the minister applied "when the station was not undertaking any hiring, and none of the individuals who submitted resumes possessed skills needed for subsequently available positions."

[11] The licensee's three hires toward the end of the license term for which it recruited with outside referral sources included two secretaries (AM and FM, respectively) and a newly created service/maintenance position for which two Black females and one Black male were hired. The Lutheran Employment Project was contacted for a secretarial position. The licensee used the following seven recruitment sources, including four minority specific sources, for an additional secretarial job and the maintenance vacancy: St. Louis Lutheran, St. Louis Sun, St. Louis Post Dispatch, Lutheran Employment Project, St. Louis American, St. Louis Argus, and the Metro Sentinel. The two positions were filled on January 30 and January 31, respectively, two days before the license term expired. The licensee did not conduct recruitment for the fourth hire, an associate director of development for KFUO(AM) for which a white male was hired.

1, 1988, through September 30, 1989. It indicates that it erroneously referred to this "net gain" when reporting the number of persons hired.

16. In a reply pleading, the NAACP argued that the licensee's discriminatory employment practices are evidenced by its extremely low minority employment and the near absence of minority recruitment activity. It faults the licensee for its failure to contact minority specific sources for upper-level positions and questions the stations' requirement for "Lutheran training" and its minority statistics. The classical music expertise criteria is "inherently discriminatory," states the NAACP, because the licensee has failed to show the need for such training. Lastly, it argues that the discrepancy in the renewal year hire information was in the licensee's favor because six hires, unlike the true number of hires, i.e., 14, would be perceived as statistically insignificant, and that such a discrepancy is a disqualifying misrepresentation.

17. The licensee answered the NAACP's reply comments on several procedural grounds. It also claimed that standard broadcasting industry practice requires that salespersons at classical music stations possess knowledge about the format. Lastly, it termed its representation of the renewal year hires as six rather than the actual 14, as an "understandable [albeit regrettable]" error.

18. In a fourth additional letter of inquiry to the licensee (November 17, 1992), we asked for the duties and responsibilities as well as the qualifications of the persons hired for positions from October 1, 1986, through October 1, 1989, which required either theological training or classical music expertise. We also questioned the licensee about the number of employees from 1987 to 1989 who were former employees of the International Center of the Lutheran Church/Missouri Synod or employee referrals. Additionally, we asked KFUO/KFUO-FM to explain how its practice of not recruiting for positions due to its agreeement with Concordia Seminary comports with its obligations under our EEO Rule.

19. In its response of December 28, 1992, the licensee stated that no resumes were on file for former employees, and submitted the affidavit of its operations manager who stated that he recalled that one announcer had experience as a volunteer at a church "homeless" center; the other announcer attended Lutheran schools and was "once employed at Church headquarters" where she produced videos about the Lutheran Church. The licensee did not explain exactly what theological training was required for its announcing positions or how these two employees exhibited the

requisite skills and training prior to employment.[12]

20. Also, no resumes were on file for its sales staff. However, based on the recollection of the operations manager, the licensee asserted that many of the sales staff were knowledgeable about classical music, "although not all were."[13] The licensee did not specify what constitutes classical music expertise or why the requirement was apparently waived in some instances. KFUO/KFUO-FM reported that at least 16 of 28 (57%) employees hired during the three-year review period were referred by the stations' employees or were previous employees at the Church headquarters.[14]

21. The licensee stated that its hiring practices are consistent with Kings Garden, Inc. v. FCC, 498 F.2d 51 (D.C. Cir. 1974), which exempts positions substantially connected with religious programming from the Commission's affirmative action rule. Moreover, according to the stations, "nearly all" of the jobs taken by seminary students were exempt from the EEO Rule based on Kings Garden and those that were not exempt were subject to important financial considerations (i.e., the rental agreement).

III. DISCUSSION

EEO Implementation

22. Our review indicates that the licensee made 32 full-time, including 25 upper-level, hires from October 1, 1986, to January 31, 1990, for KFUO/KFUO-FM combined. Of those hires, KFUO(AM) had 14 vacancies (including eight upper-level jobs). The licensee did not recruit for seven (50%) of the 14 jobs. Our investigation reveals that it neglected to recruit for four of those jobs due to its agreement with Concordia Seminary that, in spite of our EEO Rule, the licensee would hire seminary students and spouses without affirmative, outside recruitment. The licensee seeks to excuse this arrangement by claiming financial considerations. See paragraph 10, supra. However, an

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[12] The stations indicate that 90% of the programming on KFUO(AM) is religious.

[13] We note the record reveals 14 sales hires during the three-year period and our letter specifically requested the classical music background of the persons hired for those sales positions. The stations provided data for only two of the 14 hires.

[14] The stations explain that they are not "separate legal entities" from the International Center of the Lutheran Church/Missouri Synod. All of the stations' staff are also employees of the Center.

arrangement, such as here, that results in lack of adherence to our EEO requirements because a station is getting rent free studios is unacceptable and contrary to our EEO policies.

23. The licensee filled an additional three unrecruited positions by a walk-in applicant from the church headquarters, a former church employee and a former consultant.[15] For five (all upper-level) of the seven jobs where limited recruitment was performed (see note 10, supra), the licensee did not contact recruitment sources likely to refer qualified minority candidates. The licensee argues that, due to a lack of "Lutheran training," minorities were deemed unqualified. We find the licensee's argument without merit because the record does not indicate that it ever used minority specific sources, or even widely circulated general sources, for five of seven AM vacancies where recruitment was performed. Recruitment was limited to The Lutheran Witness, other Lutheran publications and the St. Louis Broadcast Center. The licensee's conclusions about the qualifications of minorities in its MSA are speculative because it assumed its recruitment efforts would be unproductive without conducting any meaningful recruitment.

24. Of the 14 AM vacancies, the only recruited positions filled by Blacks were two lower-level jobs. These positions were opened or created after the Commission initiated a more extensive review of the stations' efforts and after the NAACP filed its challenge to the renewal applications. Thus, the licensee made its first efforts to recruit minority applicants only after its renewal applications and EEO program were questioned and challenged and then only for specific lower-level positions.[16]

25. Of the 18 vacancies filled at KFUO(FM), 14 (78%) (all upper-level) were unrecruited, including 12 sales jobs and two announcing positions. The licensee claimed that it restricted its recruitment efforts at KFUO(FM) because it required its sales staff to have classical music expertise and it deemed only 2,693 Blacks in the St. Louis MSA (its Black listenership) had such training. However, not all of the sales staff met the requirement of classical music expertise and the licensee failed to explain under what circumstances it waived this requirement. Moreover, again the licensee has engaged in speculation about the qualifications of minorities without having conducted any recruitment. It appears that all of the 14 unrecruited positions

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[15] Two of the 14 jobs at KFUO(AM) were filled by church contacts. Overall, 16 (50%) of 32 jobs at both stations were filled with church referrals.

[16] The secretarial and maintenance positions were filled within the last two days of the license term which expired on February 1, 1990. See note 11, supra.

were filled by church employees or persons referred by church employees. For the four remaining vacancies -- three upper-level, one lower-level -- where the licensee did recruit, only the lower-level position was announced to a minority specific source.[17] It would appear that the licensee's reasons for its failure to conduct recruitment at the FM station are inherently discriminatory and not based on the results of any actual recruitment efforts.[18]

26. We conclude that the licensee's explanations and reasons for failing to recruit -- management turnover, classical music expertise, "Lutheran training" and the seminary agreement -- are unacceptable. The licensee cannot demonstrate one position prior to November 1989, some three months prior to license term expiration, where it used a referral source likely to attract qualified minority applicants. Moreover, the record does not reflect that the licensee ever satisfactorily explained what it intended by its requirements of "Lutheran training" or "classical music expertise" or that most of its hires met even those requirements. These vague, unascertainable criteria had a direct adverse impact on Blacks, foreclosing them initially from any employment with the stations and, subsequently, from upper-level employment. First, the fact that not all persons employed in sales positions had classical music expertise, at a minimum, raises questions about the bona fides of this criteria as a justification for not recruiting Blacks. Second, the licensee made no attempt to recruit minorities who did have classical music training. Third, the licensee's use of statistics on minorities with Lutheran training appears to evidence a pre-conceived notion about the suitability of minorities to perform certain jobs. Lastly, the licensee violated our EEO Rule in deference to its agreement with Concordia Seminary to employ seminary students and their spouses. The agreement with the seminary clearly abrogates our EEO Rule. As the court stated in Kings Garden, "like any other group, a religious sect takes its franchise 'burdened by enforceable public obligations' ... the Constitution does not obligate the FCC to relinquish its regulatory mandate so that religious sects may merge their licensed franchises completely into their ecclesiatical structures." Kings Garden, supra, at 60. See also Radio Milton, Inc., 38 Fed. Reg. 20,939 (FCC 1973) (hearing designation order). In view of all of the foregoing, it appears that substantial and

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[17] We note that the vacancy for a general manager for the classical formatted station was recruited with The Lutheran Witness, a religious publication.

[18] Combined Annual Employment Reports from 1987 to 1990 (filed by May 31st in each year) show no Black employees in upper-level positions in any year and no Blacks at all until the 1990 report filed for the renewal year.

material questions of fact exist to whether the licensee's employment practices are discriminatory in violation of our EEO rule, 47 C.F.R. § 73.2080. These questions must be resolved in a hearing proceeding.

Misrepresentation/Lack of Candor

27. In its renewal applications and supplement, it appears the licensee misrepresented critical facts about its EEO program. In response to our question regarding the number of total hires (full-time and part-time) during the 12 months preceding renewal, the licensee responded (in renewal applications which were signed by the president of the licensee organization, The Lutheran Church/Missouri Synod) that it hired six persons. It repeated that representation some three months later in its renewal supplement. Then, after the Commission questioned the licensee about its specific recruitment and hiring efforts during the license term, the licensee provided new information which indicated hires more than twice the number originally reported. However, KFUO/KFUO-FM neither specifically addressed its earlier misstatements nor offered any explanation for the material change in information submitted. Not until our third inquiry letter, in which we specifically queried the licensee on the discrepancy, did KFUO/KFUO-FM attempt an explanation. That explanation is not dispositive of our concerns. It stated that it inspected records and concluded that it had a "net gain" of six hires. However, the licensee did not provide any data or records to substantiate how it made the calculation of six hires. Moreover, without the challenge to its renewal applications, the licensee's recruitment and hire record would have appeared much better than it actually was. Because we must rely on truthful reporting by our licensees in assessing the success of an EEO program, we are particularly concerned when we find the actual number of hires is more than twice the number of hires repeatedly reported. See Dixie Broadcasting, Inc., 7 FCC Rcd 5638 (1992); WXBM-FM, Inc., 6 FCC Rcd 4782 (1991).

28. Moreover, the licensee has been less than forthcoming in responses to inquiries regarding the specifics of its EEO outreach efforts. It appears that the licensee lacked candor in its representation of its recruitment program. In its renewal applications, the licensee stated that it recruited for vacancies as they occured and that they actively sought female and minority referrals.

29. To the contrary, it appears that KFUO/KFUO-FM's license term recruitment efforts were severely limited. It mailed a general recruitment letter to nine referral sources approximately two and a half months prior to renewal. Additionally, the record reveals that only 11 of 32 jobs (34%) received recruitment and that minority specific sources were used principally in the last three

months of the license term for only lower-level positions. The license renewal applications were silent regarding the agreement with Concordia Seminary as well as the licensee's requirements for Lutheran and classical music training. Moreover, its general recruitment letter did not indicate that prospective applicants should have such training. In fact, the licensee did not reveal these important factors about its recruitment program until it filed its opposition to NAACP's petition. Without the challenge to its renewal applications, the licensee's true EEO program and policies might not have been ascertained.

30. Finally, it appears that the stations misrepresented their requirement of classical music expertise for its sales positions at KFUO(FM). The licensee described at length the scarcity of qualified minorities for sales vacancies; however, the record fails to demonstrate that all, or even most, salespersons hired during the license term met that requirement. Based on the foregoing, we conclude that a substantial and material question of fact exists as to whether and to what extent the licensee engaged in misrepresentation or lack of candor with respect to responses to Commission inquiries regarding the above matters in violation of Section 73.1015 of the Commission's Rules, 47 C.F.R. § 73.1015.

IV. CONCLUSION

31. Based on the foregoing, we conclude that the licensee's submissions raise substantial and material questions of fact as to whether, in light of its inconsistent and erroneous responses, along with its failure to establish and maintain an equal opportunity policy, the licensee complied with Section 73.2080 of the Commission's Rules, 47 C.F.R. § 73.2080; and whether it misrepresented or lacked candor in providing information to the Commission concerning its recruitment and employment history and practices. We conclude that KFUO/KFUO-FM's renewal applications should be designated for hearing.

V. ORDERING CLAUSES

32. Accordingly, **IT IS ORDERED** that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. § 309(e), the above-captioned applications **ARE DESIGNATED FOR HEARING** to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine the extent to which the licensee of Stations KFUO/KFUO-FM complied with the affirmative action provisions specified in Section 73.2080(b) of the Commission's Rules, 47 C.F.R. § 73.2080;

(2) To determine whether the licensee of Stations KFUO/KFUO-FM made misrepresentations of fact or was lacking in candor in violation of Section 73.1015 of the Commission's Rules, 47 C.F.R. § 73.1015, with regard to the stations' EEO program and documents submitted in support thereof;

(3) To determine whether, in light of evidence adduced pursuant to the foregoing issues, a grant of the subject license renewal applications would serve the public interest, convenience and necessity.

33. IT IS FURTHER ORDERED that, in accordance with Section 309(e) of the Communications Act, as amended, the burden of proceeding with the introduction of the evidence upon issues (1), (2), and (3) and the burden of proof with respect to all issues shall be upon the licensee The Lutheran Church/Missouri Synod.

34. IT IS FURTHER ORDERED that the Missouri State Conference of Branches of the NAACP and its St. Louis branch are made parties to the hearing ordered herein.

35. IT IS FURTHER ORDERED that, to avail themselves of the opportunity to be heard, the parties respondent herein shall, pursuant to Section 1.91(c) and Section 1.221(c) of the Commission's Rules, 47 C.F.R. Sections 1.91(c) and 1.221(c), in person or by attorney, file with the Commission, in triplicate, within twenty (20) days of the mailing of this Order, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order. If the licensee fails to file a written appearance within the time specified, or within 20 days of the mailing of this Order, files a written statement expressly waiving its right to a hearing, the licensee's right to a hearing **SHALL BE DEEMED TO BE WAIVED**. In the event the right to a hearing is waived, the Presiding Judge, or the Chief Administrative Law Judge, if no President Judge has been designated, **SHALL TERMINATE** the hearing proceeding with respect to the licensee and **CERTIFY** such portion or all of the case to the Commission in the regular course of business, and an appropriate Order shall be entered. See 47 C.F.R. § 1.92(c) and (d).

36. IT IS FURTHER ORDERED that The Lutheran Church/Missouri Synod shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, 47 U.S.C. § 311(a)(2), and Section 73.3594 of the Commission's Rules, 47 C.F.R. § 73.3594, give **NOTICE** of the hearing within the time and in the manner prescribed and shall **ADVISE** the Commission of the publication of such notice as required by Section 73.3594(g) of the Commission's rules.

37. IT IS FURTHER ORDERED that irrespective of whether the hearing record warrants an Order denying the renewal applications of The Lutheran Church/Missouri Synod for Stations KFUO/KFUO-FM, it shall be determined, pursuant to Section 503(b) of the Communications Act of 1934, as amended, whether an **ORDER FOR FORFEITURE** in an amount not to exceed $250,000, shall be issued against The Lutheran Church/Missouri Synod for the willful and/or repeated violations of Commission Rules Section 73.2080 (establishing and maintaining an affirmative action policy) and Section 73.1015 (submitting truthful statements to the Commission).

38. IT IS ORDERED that, in connection with the possible forfeiture liability noted above, this document constitutes notice pursuant to Section 503(b)(3) of the Communications Act of 1934, as amended. The Commission has determined that, in every case designated for hearing involving revocation or denial of assignment, transfer or renewal of license for alleged violations which also come within the purview of Section 503(b) of the Communications Act of 1934, as amended, it shall, as a matter of course, include this forfeiture notice so as to maintain the fullest possible flexibility of action. Accordingly, we stress that the inclusion of this notice is not to be taken as in any way indicating what the initial or final disposition of this case should be.

39. IT IS FURTHER ORDERED that the Acting Secretary shall send by Certified Mail -- Return Receipt Requested -- one copy of this Order to each of the parties to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Concurring Statment of Commissioner James H. Quello

In re Applications of The Lutheran Church/Missouri Synod For Renewal of Licenses of Stations KFUO/KFUO-FM Clayton, Missouri

It is with a heavy heart that I concur in this decision. While I recognize that the facts in this case legally support designation of the renewal applications of Stations KFUO/KFUO-FM for hearing, I nonetheless write separately to emphasize that I viewed this case with a careful eye, ever watchful of the fragile relationship between broadcasters and the federally-licensed spectrum on which they rely. Designation for hearing in my mind is, and will remain, a last resort only for the most serious of cases.

In this case, the licensee argued that its formats require that all upper-level positions be filled with persons with classical music expertise or theological training. Yet the licensee was unable to explain specifically why such a background was necessary to the performance of each upper-level job at the stations. Indeed, it appears that in some instances these jobs were filled by non-minority candidates who had neither classical music nor theological training.

I was also troubled by the licensee entering into an agreement with Concordia Seminary to provide broadcast training to seminary students and their spouses in exchange for rent free studios. This agreement, which was only brought to the Commission's attention in response to extensive inquiries, appears to be directly contrary to our EEO rule. This rule requires licensees to establish and maintain a program reflecting positive and continuing efforts to recruit, employ and promote qualified women and minorities.

Finally, I am concerned with the discrepancy between the renewal year hires reported on the station's renewal applications (6) and those reported on their inquiry responses (14), especially in light of the fact that this "error" was in the licensee's favor.

In light of the above, I am compelled to concur with my colleagues in designating the renewal applications of KFUO/KFUO-FM for hearing.

Before the
Federal Communications Commission
Washington, D.C. 20554

FCC 94-27

In the Matter of	)
	)
Standards for Assessing	)
Forfeitures for Violations	)
of the Broadcast EEO Rules	)

POLICY STATEMENT

Adopted: January 31, 1994 ; Released: February 1, 1994

By the Commission: Commissioner Quello issuing a statement.

I. Introduction

1. In this Policy Statement, we establish non-binding guidelines for assessing forfeitures for violations of the Commission's broadcast Equal Employment Opportunity (EEO) rules.[1]

2. The Commission's broadcast EEO rules and other policies which promote participation by minorities and women in the broadcast industry are vitally important. They further the Commission's goals of promoting diversity of programming on broadcast stations. See NAACP v. FPC, 425 U.S. 662, 670 n. 7 (1975); Metro Broadcasting, Inc. v. FCC, 497 U.S. 547 (1990) (Metro). And, as the Supreme Court has noted, "[s]afeguarding the public's right to receive a diversity of views and information over the airwaves is . . . an integral component of the FCC's mission." Metro, 497 U.S. at 548. We reaffirm our commitment to this bedrock goal underlying our broadcast EEO rules and believe that the Policy Statement we adopt here will further achievement of that goal.

3. In addition to promoting program diversity, our broadcast EEO rules enhance access by minorities and women to increased employment opportunities. Increased employment opportunities are the foundation for increasing opportunities for minorities and women in all facets of the communications industry, including

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[1] See 47 C.F.R. § 73.2080.

participation in ownership.[2] Those who have access to employment opportunities are able to develop experience and expertise that can be put to beneficial use in a variety of communications enterprises, in a variety of ways. Thus, by combating discrimination and other arbitrary barriers to employment, we contribute to the development of the broadcast industry and ultimately promote the further development of the broader communications infrastructure.[3]

II. Background

4. In 1989, Congress amended the Communications Act of 1934 to increase substantially the maximum dollar amounts of forfeitures the Commission could impose on broadcasters under Section 503(b) of the Act.[4] The Commission's forfeiture rule has been amended to reflect the higher forfeiture amounts. 47 C.F.R. § 1.80(b)(1).

5. On August 1, 1991, in order to assist both the Commission and licensees in adjusting to the statutory increases, the Commission released its Policy Statement, Standards for Assessing Forfeitures (1991 Policy Statement).[5] The 1991 Policy Statement provided general, non-binding guidance regarding the assessment of forfeitures. It established base forfeiture amounts for a wide range of violations. For violations of broadcast EEO rules, the Commission set a base amount of $12,500. The 1991 Policy Statement also provided that the base forfeiture amount for any violation

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[2] The Commission seeks to promote minority ownership of broadcasting facilities. See Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC 2d 849 (1982); Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979 (1978).

[3] We note, in this regard, that Section 309(j)(4)(C) of the Communications Act of 1934, as amended, directs the Commission to promote economic opportunity in competitive bidding among applicants proposing to use the spectrum "by disseminating licenses among a wide variety of applicants . . . including businesses owned by members of minority groups and women."

[4] Pub. L. No. 239, 101st Cong., 1st Sess., 103 Stat. 2131 (1989) (amending, among other sections, 47 U.S.C. § 503(b)). Amended Section 503(b) provides the Commission with authority to assess forfeitures of up to $25,000 for each violation or each day of a continuing violation against broadcasters, with a limit on forfeitures for continuing violations involving a single act or failure to act of $250,000 for broadcasters.

[5] 6 FCC Rcd 4695 (1991), modified in part on recon., 7 FCC Rcd 5339 (1992), petition for review pending sub nom. USTA v. FCC, No. 92-1321 (D.C. Cir. filed July 30, 1992).

could be increased or decreased by applying adjustments to the base amount as relevant to the facts in any particular case. On August 12, 1993, the Commission released its most recent forfeiture guidelines.[6] Among other actions, the 1993 Policy Statement deleted the broadcast EEO violation category and indicated that the Commission would issue a further policy statement on broadcast EEO forfeiture matters at a later date.[7]

III. Discussion

6. The Policy Statement we adopt here, as set forth in the Appendix, re-establishes the base forfeiture amount for violations of the broadcast EEO rules at $12,500. It also provides guidance on what situations may generally lead to such a forfeiture. In addition, it describes upward and downward adjustment criteria that may be used to adjust the forfeiture in particular cases. The adjustment guidelines reflect the factors set forth in Section 503(b) of the Act, section 1.80 of our rules and case precedent. See 47 U.S.C. § 503(b)(2)(D); 47 C.F.R. § 1.80(b)(4). All of these factors will not necessarily be relevant in each individual case and other adjustments may also be made as appropriate in particular cases. The Appendix also provides guidance regarding when short-term renewals may be appropriate in particular cases. We believe that these guidelines will assist the Commission and its staff in determining broadcast EEO forfeitures in a generally consistent manner that furthers the public interest while nevertheless ensuring that the Commission and the staff retain the discretion to decide each case based on the specific facts and circumstances at issue. At the same time, we believe these guidelines will give licensees and the public greater guidance regarding which types of forfeitures may result from particular types of EEO violations.

7. Finally, we stress that we do not intend this Policy Statement to limit our flexibility. In particular cases, forfeitures that are higher or lower than those reflected by the guidelines may be imposed. In this regard, what we have said in connection with our prior forfeiture policy statements applies here as well:

> [T]he Policy Statement simply describes the general approach the Commission may take in forfeiture cases and is not binding on any licensees or the Commission. The Policy

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[6] 8 FCC Rcd 6215 (1993), petition for review pending sub nom. USTA v. FCC, No. 93-1526 (D.C. Cir. filed August 23, 1993) (1993 Policy Statement).

[7] Id. at n.1. The forfeiture amount for violations of the Commission's cable EEO rules is set at $500 per day by section 634 of the Act and is addressed in the 1993 Policy Statement.

> Statement does not impose any obligations on [licensees] or require the Commission to issue a forfeiture of any particular magnitude -- or any forfeiture at all . . . .
>
> * * * *
>
> [W]e reiterate that while the Policy Statement may guide us and the staff in particular cases, we do not intend for the Commission or the staff to be bound by it. In addition, both the Commission and the staff intend to apply these guidelines flexibly. In particular, we and the staff remain committed to deciding every forfeiture case on the basis of the specific facts and equities presented in the record of that case.

7 FCC Rcd at 5339 (internal citations omitted).

IV. Conclusion

8. Accordingly, IT IS ORDERED that this Policy Statement IS ADOPTED, to be effective upon adoption.

9. The notice and comment and effective date provisions of the Administrative Procedure Act do not apply to this Policy Statement. 5 U.S.C. § 553(b)(A),(d)(2).

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

Failure to recruit so as to attract an adequate pool of minority/female applicants or hires for at least 66% of all vacancies during the license term being reviewed (Evidence of this violation will include (1) inadequate record-keeping and/or (2) inadequate self-assessment throughout the license term)	$12,500 base forfeiture (accompanied by reporting conditions)

Upward Adjustment Criteria

I. Egregious Misconduct

A. Failure to recruit so as to attract an adequate pool of minority/female applicants or hires for at least 33% of all vacancies reported for the license term being reviewed. Efforts are evaluated both for the station's staff overall and for upper four job categories. (EEO programs achieving only this level of compliance will warrant a short-term renewal, irrespective of whether other upward adjustments for "egregiousness" factors are present, if the percentage of vacancies for which the licensee failed to recruit, or the percentage of pools containing minorities, falls below 33% and other factors— e.g., use and productivity of recruiting sources, use and productivity of minority-specific sources; evidence of self-assessment— are absent or particularly inadequate)	$ 6,250 upward adjustment

B. Large number of hiring opportunities that did not translate into an adequate pool of minority/female applicants or employees hired.

- "Large number" means hiring opportunities equal to at least the average number of employees on the full-time staff, with a minimum of 25 hiring opportunities — $ 6,250 upward adjustment (Base plus 50%)

- "Substantial number" means hiring opportunities equal to three times the number of full-time staff, with a minimum of 25 hiring opportunities — Additional upward adjustment of 50-90% of base

C. Large pool of minorities/women in the relevant labor force did not translate into an adequate pool of applicants minority/women or employees hired

Analysis will focus on (1) the overall percentage of minorities in the relevant labor force and (2) the presence of a single minority group constituting a significant percentage of that labor force.

- If a licensee has a relevant labor pool of at least 20 percent minorities or a single minority group constitutes at least 10 percent of the labor force ——————» — $ 6,250 to $11,250 upward adjustment (base plus 50-90%)

Short term renewals: Short term renewals will be assessed if (A), (B) or (C) are applied in any combination of two or more upward adjustments. In addition, short term renewals also will be warranted where the specific criteria set forth in (A) above are present. The presence of the mitigating factors described in Section II below are grounds for not issuing short term renewals.

D.	Prior EEO violations that resulted in previous sanction or remedy	– If reporting conditions were previously imposed, the licensee receives reporting conditions and the base forfeiture plus a 90% upward adjustment in addition to any other upward adjustments warranted by these guidelines (including short-term renewal) – If reporting conditions plus a forfeiture were previously imposed, the licensee receives reporting conditions, the base forfeiture plus a 90% upward adjustment, any other upward adjustments warranted by these guidelines, and a short-term renewal – If previous sanction and remedies included a short-term renewal, the renewal will be designated for hearing and possible forfeiture of $250,000
E.	EEO violations with respect to both minorities and women	$11,250 upward adjustment and a short-term renewal

Downward Adjustment Criteria

II.	Actual Hiring Experience	
A.	Minority hiring represents 50% of the minority profile of the relevant labor force for both overall employment and upper four employment	$ 6,250 downward adjustment
	or	
B.	Minority hiring represents 100% of the minority profile of the relevant labor force for both overall employment and upper four employment	$ 6,250 downward adjustment and presumptive removal of short-term renewal. Evidence indicating the substantial absence of an EEO program will rebut the presumption of removal.
III.	Employment Profile	
C.	Minority employment represents 50% of the minority profile of the relevant labor force for both overall employment and upper four employment	$ 6,250 downward adjustment
	or	

D. Minority employment represents 100% of the minority profile of the relevant labor force for both overall employment and upper four employment	$ 6,250 downward adjustment and presumptive non-issuance of short-term renewal. Evidence indicating the complete absence of an EEO program will rebut the presumption of removal.
III(C) and III(D) apply if the employment profile meets the guidelines in 4 of 5 years for a television renewal and 6 of 7 years for a radio renewal. Where less than a full term exists, the employment profile must meet the guidelines for a majority of the years reported	
IV. Employment Profile and Hiring Experience	If II(B) and III(D) apply, a short-term renewal would not be imposed.
V. Few Hiring Opportunities	
A. 5 or fewer hiring opportunities across the entire license term	$ 6,250 downward adjustment
B. 10 or fewer hiring opportunities across the entire license term if the average full-time staff during the entire term exceeds 50 employees	$ 6,250 downward adjustment (Either (A) or (B) will apply, but not both)
VI. Low Percentage of Minorities in Relevant Population	
Minorities constitute less than 6% of the relevant labor force	$ 6,250 downward adjustment and possible non-issuance of short-term renewal depending upon staff balancing of factors (number and productivity of sources contacted, number and productivity of minority-specific sources, extent to which licensee demonstrated severe shortfall in recruitment)
VII. Inability to Pay (if raised and demonstrated by the licensee)	Varies
VIII. Stand-alone station in markets 200 and above as reflected in the annual Abitron population rankings.	$ 6,250 downward adjustment

Separate Statement of Commissioner James H. Quello

In the Matter of Standards for Assessing Forfeitures for Violations of the Broadcast EEO Rules

The Commission today has voted an item that will prove to be a turning point in the enforcement of our EEO rules. This Policy Statement sets forth guidelines for assessing forfeitures for violations of the Commission's EEO rules. 47 C.F.R. 73.2080. As reflected in the statement, the base amount for a forfeiture will be $12,500, an amount that can be increased or decreased depending on the facts of a given case. These higher forfeitures are a direct result of the increases in forfeiture amounts imposed by Congress. The guidelines are designed to ensure that these new, higher forfeitures are assessed in a reasoned, consistent manner. For this reason, and because I strongly support vigorous enforcement of our EEO rules, I have voted in favor of this item.

However, at the same time, I am concerned that the Commission may be entering the era of the telecommunications superhighway wielding a club, rather than offering a hand, to broadcasters making their way down the road. At the dawn of this new era, we are imposing fines against 22 of 24 radio stations whose EEO records were reviewed, in amounts ranging from $18,750 to $37,500. Short term renewals are assessed against 21 of the 22 stations receiving forfeitures. Radio broadcasters will be "contributing" a total of $325,000 to the Federal Treasury as a result of our actions today. I am troubled by the amount of these forfeitures and the increased use of the short term renewal as a sanction. Yet, I recognize that, at least with respect to the increased forfeiture amounts, Congress increased our forfeiture authority.

I would have much preferred an approach that would have served three compelling goals: (1) ensuring compliance with our EEO rules by imposing meaningful sanctions; (2) imposing these sanctions in such a way so as not to cripple broadcasters in their travels along the information superhighway; and (3) directly furthering the underlying public interest purpose of the EEO rule -- the increased hiring and promotion of minorities and women in the broadcast industry. Specifically, if we had the legal authority to do so, I would have voted for a program that would have allowed monies received as a result of violations or alleged violations of our EEO or other rules to be placed into a fund and not into the Federal Treasury. Funds received for EEO violations would be used for training, educating, and providing placement services for minorities and women interested in a career in broadcast. What better use for the $325,000 in forfeitures imposed for violations of the EEO rules today than for the very purpose underlying the rule?

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 94-29

In re Application of	)	
	)	CC Docket No. 94-11
TELEPHONE AND DATA SYSTEMS, INC.	)	File No. 10209-CL-P-715-B-88
	)	
For facilities in the Domestic Public Cellular Telecommunications Radio Service on Frequency Block B, in Market 715, Wisconsin 8 (Vernon), Rural Service Area	)	

MEMORANDUM OPINION AND ORDER AND HEARING DESIGNATION ORDER

Adopted: February 1, 1994 Released: February 1, 1994

By the Commission:

1. The Commission has before it two Applications for Review of the Common Carrier Bureau's (Bureau) decision in Telephone and Data Systems, Inc., 6 FCC Rcd 270 (Com. Car. Bur. 1991). These Applications for Review were filed on February 15, 1991, by a group of applicants which comprised a partial settlement group in the Wisconsin 8 (Vernon) Rural Service Area (hereinafter referred to collectively as the settling partners),[1] and by Telephone and Data Systems, Inc. (TDS). For the reasons stated below, we grant in part the Application for Review filed by TDS and deny the Application for Review filed by the settling partners. In this Order, we additionally designate for hearing character issues concerning a TDS subsidiary's conduct before the Commission and whether this calls in question TDS's qualifications as a Commission licensee.[2] By ensuring that our licensees are fully qualified, our action will promote full and fair competition to the benefit of the Nation's economy.

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[1] The settling partners are: Century Cellunet, Inc. (Century), Contel Cellular, Inc., Conn Valley Farmers Telephone Company, Inc., Farmers Telephone Company, Hillsboro Telephone Company (Hillsboro), LaValle Telephone Cooperative (LaValle), Monroe County Telephone Company, Mount Horeb Telephone Company, North-West Cellular, Inc., Richland-Grant Telephone Cooperative, Inc., Vernon Telephone Cooperative, and Viroqua Telephone Company.

[2] See La Star Cellular Telephone Company, 7 FCC Rcd 3762, at n.3 (1992).

I. BACKGROUND

2. TDS, Ameritech Mobile Communications, Inc. (Ameritech), GTE Mobilenet Incorporated (GTE), and all of the settling partners (excluding Hillsboro and LaValle) were applicants for the Block B (wireline) cellular authorization for the Wisconsin 8 (Vernon) Rural Service Area (RSA). Prior to the lottery, the ten settling partners who were original applicants in this market entered into a post-filing, partial settlement agreement (Wisconsin 8 Partnership). Also joining in the agreement were four wireline carriers which provide landline telephone service in the market but did not file applications -- Hillsboro, LaValle, Central Western Communications, Inc., and UTELCO, Inc. (UTELCO).[3] The original applicants in the market all agreed to substitute the Wisconsin 8 Partnership for their application should they be selected in the lottery. TDS, Ameritech, and GTE were not parties to the Wisconsin 8 Partnership. TDS was announced as the tentative selectee of the lottery.[4]

3. Century filed a petition to deny TDS's application, alleging that because TDS owns 49 percent of UTELCO and UTELCO was a party to the settlement agreement, TDS held an interest in more than one application for the market in violation of Section 22.921 of the Commission's Rules. Century further argued that TDS should be dismissed for failing to report to the Commission, pursuant to the requirements of Section 1.65 of the Commission's Rules, that UTELCO had become a party to the settlement agreement.

4. In Telephone and Data Systems, Inc., 4 FCC Rcd 8021 (Mobile Serv. Div. 1989), the Mobile Services Division (MSD) denied Century's petition, finding no violation of our cross-ownership rules. The MSD stated that UTELCO was not an applicant in the Wisconsin 8 lottery and the settlement agreement gave UTELCO no interest until a winning application was substituted with the Wisconsin 8 Partnership application. The MSD also indicated that interpreting Section 22.921(b) as applying to the situation here would be inconsistent with the Commission's Rules and policies favoring settlements among wireline applicants. Therefore, the MSD concluded, TDS held no interest in any other application for that market under Section 22.921(b).

5. Century and the other settling partners then filed a petition for reconsideration raising the same contentions.

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[3] Central Western and UTELCO were parties to the pre-lottery settlement agreement among the settling partners. However, neither is a participant in the settling partners' Application for Review.

[4] See Public Notice, Report No. CL-89-174 (released June 9, 1989).

Although the Bureau found that a violation of Section 22.921 occurred when UTELCO entered into the partial settlement agreement, it denied reconsideration in Telephone and Data Systems, Inc., 6 FCC Rcd 270 (Com. Car. Bur. 1991). The Bureau held that when UTELCO entered into the partial settlement agreement, a violation of the cross-ownership rules occurred because UTELCO held an interest in the settlement agreement and TDS held an interest in UTELCO. However, the Bureau decided not to dismiss TDS's application because 1) TDS was in compliance with the Commission's Rules when it filed its application; 2) if TDS's application were dismissed, all of the settling partners' applications would also have to be dismissed because they suffer from the same rule violation; and 3) TDS did nothing to unfairly skew the lottery in its favor because the settling partners could have prevented UTELCO's participation in the Wisconsin 8 Partnership. Additionally, the Bureau agreed with the MSD that TDS did not violate Section 1.65 because it was not a controlling party in UTELCO and UTELCO was not an applicant in the market. The settling partners now seek review of this decision.[5]

6. Additionally, on August 18, 1992, the settling partners filed a Supplement to Application for Review (Supplement) which argues that TDS lacks the character qualifications to be a Commission licensee because of alleged misrepresentation and lack of candor by United States Cellular Corporation (USCC), a TDS subsidiary, in the La Star Cellular Telephone Company proceeding. See La Star Cellular Telephone Company, 6 FCC Rcd 6860 (I.D. 1991) (La Star I.D.), aff'd, 7 FCC Rcd 3762 (1992) (La Star Reconsideration Order), appeal pending sub nom., Telephone and Data Systems, Inc. v. FCC, Case No. 92-1273 (D.C. Cir.).

7. The La Star proceeding involved La Star Cellular Telephone Company (La Star) and New Orleans CGSA, Inc. (NOCGSA) which filed mutually exclusive applications to provide Block B cellular service to St. Tammany Parish in the New Orleans, Louisiana, Metropolitan Statistical Area (MSA). La Star is a joint venture comprised of SJI Cellular, Inc. (SJI) and Star Communications Co. (Star); SJI owns 51 percent interest and Star owns 49 percent interest in La Star. All of the stock of Star is owned by USCC.[6] La Star's and NOCGSA's applications were designated for hearing. Threshold issues were designated against La Star to determine whether SJI,

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[5] Although the settling partners do not continue to directly argue that TDS violated Section 1.65, we affirm the Bureau on its finding that no Section 1.65 violation occurred.

[6] At the time La Star initially applied to serve St. Tammany Parish, Star was controlled by Maxcell Telecom Plus (Maxcell). Maxcell subsequently sold its interest in Star to USCC in August 1987.

the eligible carrier,[7] maintained control over La Star.[8] It was determined at the hearing that USCC was in control of La Star and its application was therefore dismissed as ineligible.[9] This decision was affirmed by the Commission.[10]

8. During the pendency of the La Star proceeding, NOCGSA attempted to add character issues against La Star. The presiding Administrative Law Judge (ALJ) declined to add such issues and made no findings as to character.[11] NOCGSA filed exceptions to the ALJ's decision on this matter.[12] In response, the Commission found it did not need to reach the character issues to find La Star ineligible for the proposed authorization. The Commission did, however, recognize the possibility that the character issues could be raised in future proceedings by stating that

> [q]uestions regarding the conduct of SJI and USCC in this case may be revisited in light of the relevant findings and conclusions here in future proceedings where the other interests of these parties have decisional significance.

La Star Reconsideration Order, 7 FCC Rcd at 3767, n.3 (footnote 3).[13] The settling partners request in their Supplement that the

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[7] SJI has a wireline presence in the New Orleans MSA; USCC does not. Therefore, pursuant to Section 22.902(b) of the Rules, only SJI was eligible to apply for a wireline license in the market. See Montgomery Independent Cellular Telephone Company, Inc., 4 FCC Rcd 2323 (1989) (applicant for a Block B cellular authorization must be either a provider of wireline service in the MSA or controlled by such a provider).

[8] See La Star Cellular Telephone Company, 5 FCC Rcd 3286 (1990).

[9] See La Star I.D., supra.

[10] See La Star Reconsideration Order, supra.

[11] See Memorandum Opinion and Order, FCC 90M-3036, released Sept. 26, 1990.

[12] NOCGSA also argued extensively in its proposed findings and conclusions that USCC and SJI lacked candor and misrepresented facts despite there being no designated character issue.

[13] On February 2, 1993, USCC filed a Petition to Delete or Nullify the Effect of Footnote Three. On February 18, 1993, Louisiana CGSA, Inc., a sister company of NOCGSA, filed a Motion for the Return of USCC's Petition to Delete or Nullify the Effect of Footnote Three; Rochester Telephone Mobile Communications filed

footnote 3 character issues be resolved against USCC and its parent company TDS in the instant proceeding. To bolster their argument that TDS lacks the character necessary to be a Commission licensee, the settling partners reference relevant sections of NOCGSA's exceptions from the La Star proceeding.

II. DISCUSSION

A. Cross-Interest

9. The settling partners argue that while the Bureau was correct in finding a violation of Section 22.921(b) of the Rules, the Bureau was in error not to dismiss TDS for the violation. In its Contingent Application for Review, TDS, on the other hand, argues that no violation of the Rules occurred because UTELCO was only included as a member of a settlement group and that the Commission's policies favoring settlements have never been held to prohibit a cross interest created by the settlement agreement alone.

10. Section 22.921(b) of the Commission's Rules provides, in pertinent part, that:

> No party to a wireline application shall have an ownership interest, direct or indirect, in more than one application for the same Rural Service Area, except that interests of less than one percent will not be considered.

The question before us is one of first impression -- does a wireline applicant's contingent interest in another application, created through a partial settlement agreement, violate Section 22.921(b)? We conclude that it does not and, accordingly, reverse the Bureau's decision to the contrary.

11. Section 22.921(b) must be read in conjunction with Section 22.33(b)(2), which was adopted at the same time.[14] Section

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a Motion to Strike Petition of USCC to Delete or Nullify the Effect of Footnote Three; Potosi Company filed an Opposition to Petition; and counsel to the settling partners filed a letter opposing USCC's petition. Several additional responsive pleadings have also been filed by USCC and the above parties. Because we are acting on footnote 3 herein, we will consider these pleadings in the instant proceeding. Louisiana CGSA, Rochester Telephone, and Potosi Company all have pending disputes against either TDS or USCC and have raised footnote 3 issues in these other proceedings.

[14] See Amendment of the Commission's Rules for Rural Cellular Service, 4 FCC Rcd 2440 (1988) (subsequent history omitted).

22.33(b)(2) provides in relevant part:

> [I]n Rural Service Areas . . . cumulative lottery chances . . . will be awarded to joint enterprises resulting from partial settlements among mutually exclusive wireline applicants only . . . . Partial settlements among non-wireline applicants for Rural Service Areas are prohibited.[15]

This rule reflects the Commission's determination that "the prohibition against partial settlements should not apply to wireline applicants."[16] In this regard, the Commission indicated that it did "not anticipate any problem in their [wirelines] entering into partial settlements . . . ."[17] There is no indication in the Order adopting Sections 22.33(b)(2) and 22.921(b), or in any other Commission order, that we intended the Section 22.921(b) cross-ownership provision to restrict the right of wireline applicants to enter into partial settlement agreements. This is not surprising, given the Commission's long history of encouraging settlements among mutually exclusive wireline applicants.[18]

12. In light of this background, we interpret Section 22.921(b) as not covering contingent interests created by settlement agreements among mutually exclusive wireline applicants. Likewise, Section 22.921(b) does not cover contingent interests created by settlement agreements among wireline applicants and non-applicants. To reach any other conclusion would undermine our goal of encouraging wireline settlements, which speed the provision of service to the public without creating significant risk of encouraging speculation. Therefore, the Bureau's conclusion that

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[15] See 53 FR 18094 (May 20, 1988). We note that the words "in Rural Service Areas" do not appear in the text of Section 22.33(b)(2) in the Code of Federal Regulations (CFR) due to an inadvertent omission on the part of the Office of the Federal Register. The rule, however, was correctly published in the Federal Register. The error in the CFR will be rectified in a separate order.

[16] Amendment of the Commission's Rules for Rural Cellular Service, 4 FCC Rcd at 2442.

[17] Id.

[18] See Cellular Communications Systems, 86 FCC 2d 469, 490-91 (1981), recon., 89 FCC 2d 58, 76 (1982); Cellular Mobile Systems of Indiana, Inc., 93 FCC 2d 26, 29 (1983); Advanced Mobile Phone Service, Inc., 93 FCC 2d 683, 691 (1983); Cellular Lottery Order, 56 Rad. Reg. 2d (P&F) 8, 24 (1984); Cellular Radio Lotteries, 101 FCC 2d 577, 588 (1985).

TDS's application should not be dismissed is affirmed, albeit on different grounds. We believe our decision will preserve our policy of favoring settlement agreements and will not lead to speculative applications. Accordingly, TDS's Application for Review is granted in part and the settling partners' Application for Review is denied with respect to this issue.

B. Character

13. Both La Star and USCC[19] argued extensively in their respective direct case exhibits that SJI was the controlling party of La Star and that USCC performed little more than ministerial tasks. La Star submitted as a part of its direct case exhibits written testimony from four USCC personnel -- USCC president, H. Donald Nelson; USCC vice president of Engineering and Operations, Richard Goehring; USCC treasurer and vice president of Finance, Kenneth Meyers; and USCC accounting manager Mark Krohse. USCC submitted a written statement of H. Donald Nelson as its direct case exhibit. Both USCC and La Star represented that SJI controlled La Star in their respective Proposed Findings of Fact and Conclusions of Law filed at the conclusion of the hearing.

14. The presiding ALJ in the La Star proceeding found that "the evidence of record overwhelmingly establishes that SJI, the eligible carrier, has never been in control of La Star."[20] The ALJ stated further that during the USCC ownership period, "USCC was the dominant partner. There is no evidence of SJI direction and oversight over the extensive La Star activities which took place."[21] The ALJ concluded that:

> [c]ontrary to La Star's contention, this was not a situation in which the ineligible partner performed only "ministerial" tasks and the eligible partner did everything else. In this case, only the ineligible partner had "active input" and participated in the prosecution of La Star's application.[22]

15. We affirmed the ALJ's conclusions, finding that the record "amply demonstrate[d] that SJI does not control La Star

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19 USCC was permitted to intervene in the La Star proceeding as a party and was represented by its own counsel. See La Star Cellular Telephone Company, 6 FCC Rcd 1245 (1991).

20 La Star I.D., 6 FCC Rcd at 6885.

21 Id. at 6886.

22 Id. (emphasis in original).

. . . ."[23] We further concluded that "to all appearances, USCC controlled the applicant."[24] It is from this factual background that we examine the allegations that USCC misrepresented facts and lacked candor in the La Star proceeding.

16. The Commission has consistently required its applicants and licensees to be fully forthright and candid in their dealings with the Commission. As the Commission's Review Board stated in Silver Star Communications-Albany, Inc.,[25] there is a "special duty imposed upon FCC licensees and applicants to go beyond merely avoiding an affirmative misrepresentation, but to be fully forthcoming as to all facts and information relevant to a matter before the FCC, whether or not such information is particularly elicited."[26] The United States Court of Appeals has recognized this special duty imposed upon applicants to be fully candid. As the Court stated in RKO General, Inc. v. FCC:

> the Commission must rely heavily on the completeness and accuracy of the submissions made to it, and its applicants in turn have an affirmative duty to inform the Commission of the facts it needs in order to fulfill its statutory mandate. This duty of candor is basic, and well known. (Citations omitted.)[27]

Accordingly, we will examine the testimony by the USCC witnesses against this standard.

17. While NOCGSA raises several instances in which it asserts USCC witnesses either lacked candor or misrepresented facts, we are examining in detail here only the allegations concerning Nelson's testimony about the La Star Management Committee. Prior to USCC's involvement in the New Orleans application, SJI and Maxcell entered into a Joint Venture Agreement.[28] When USCC assumed Maxcell's interest in La Star, it took Maxcell's position under the Joint Venture Agreement. The Joint Venture Agreement outlined the duties

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[23] La Star Reconsideration Order, 7 FCC Rcd at 3764.

[24] Id. at 3766.

[25] 3 FCC Rcd 6342 (Rev. Bd. 1988), aff'd in part, rev'd in part on other grounds, 6 FCC Rcd 6905 (1991)(Chairman Sikes dissenting). See also 47 C.F.R. § 1.17.

[26] Id. at 6349.

[27] RKO General, Inc. v. FCC, 670 F.2d 215, 232 (D.C. Cir. 1981), cert. denied, 456 U.S. 927 and 457 U.S. 1119 (1982).

[28] A copy of the Joint Venture Agreement is found at La Star Ex. 12, Att. B.

and responsibilities of each party to the Agreement. Among other things, the Agreement called for the formation of a Management Committee of five members.[29] Three members of the La Star Management Committee were to be appointed by SJI and the remaining two appointed by USCC.

18. USCC president and member of the La Star Management Committee, Donald Nelson, in his written statement submitted as a part of La Star's direct case, swore that the Management Committee controlled the affairs of La Star. Specifically, Nelson testified: "Since my appointment to the Management Committee in August, 1987, I have always acted on the belief that La Star's Management Committee is controlled by the three members appointed by SJI Cellular. I am not aware of a single instance where that has not been the case."[30] Nelson further stated:

> I conferred with the SJI Cellular members of the Management Committee only when a particular issue facing the venture required a joint effort to resolve. For example, when La Star was engaged in settlement negotiations with New Orleans CGSA, Inc. (NOCGSA), La Star needed to develop a settlement proposal to present to NOCGSA. Because of the wide variety of possible settlement options and the different perspectives of the two venturers, a telephone conference was held. . . .
>
> All participation by USCC in the activities of La Star was at the specific request of SJI Cellular or the Management Committee . . . .[31]

19. A reading of Nelson's written testimony gives the appearance that the La Star Management Committee, which was under SJI's direction, was controlling the actions of La Star. Nelson's oral testimony, however, paints a different picture. For instance, under cross examination Nelson admitted that the Management Committee never formally voted on any matter and indeed never held telephone conferences:

> MR. TOLLIN:[32] Was there ever an official vote taken, that you could remember, of the Management Committee?

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[29] Article IV of the Joint Venture Agreement deals with the formation of the Management Committee. See id. at pp.7-10.

[30] See La Star Ex. 15, p.2.

[31] See id., at pp.3-4.

[32] L. Andrew Tollin was counsel representing NOCGSA in the La Star proceeding.

MR. NELSON: By an "official vote," do you mean --

MR. TOLLIN: A vote. Do you ever remember a conference call in which all Management Committee members were present or a personal meeting in which there was a vote taken?

MR. NELSON: No.[33]

20. Furthermore, Nelson's testimony under cross examination conflicts with the statement in the written exhibit that the Management Committee directed Nelson's actions in La Star. The following exchange is illustrative:

MR. TOLLIN: Well, I'd like to know the basis for your statement that you were directed by the Management Committee, for instance. Why don't you give me an example of that?

MR. NELSON: I would get a call from Mr. Belendiuk[34] who would indicate that we were being requested to provide such information.

JUDGE CHACHKIN: Did you ever receive a specific request from SJI Cellular or the Management Committee?

MR. NELSON: I don't recall a specific.[35]

Moreover, the record shows that after USCC acquired its interest in La Star, the Management Committee only met once shortly after USCC's acquisition of Maxcell's interest.[36] The Management Committee never met as a whole in person or over the telephone again thereafter.[37]

21. Additionally, during recross examination, Nelson's testimony showed an even more limited role of the La Star Management Committee:

MR. TOLLIN: You said there was really no need for any Management Committee telephone conferences or actual

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[33] Tr. at 1443 (footnote added).

[34] Arthur V. Belendiuk was counsel representing La Star in the La Star proceeding.

[35] Tr. at 1448-49 (footnote added).

[36] La Star Ex. 12, p. 7.

[37] La Star I.D., 6 FCC Rcd at 6866.

meetings. Isn't it true during the period you owned the stock of STAR -- when I'm speaking of "owned" -- "you owned," I'm speaking of U.S. Cellular -- that there were decisions that had to be made about the contents of the October filing, decisions that had to be made with regard to the contents of your interim application, decisions that had to be made with regard to the appeal of the NOCGSA interim operating authority that was granted to it by the Commission after the La Star application was reinstated, and wasn't there really a need to have a full-blown Management Committee telephone conference call when you amended the agreement?

MR. MILLER:[38] Your Honor, I counted at least five questions there, and I don't know how the witness could possibly answer them.

JUDGE CHACHKIN: Well, we can go one by one.

MR. TOLLIN: Let's go one by one. Let's start with the October filing.

Were there not decisions that had to be made as to the contents of those filings and the direction that you were going to go in?

MR. NELSON: No.

MR. TOLLIN: No decisions? And how about any decisions with regard to the interim filing?

MR. NELSON: No.

MR. TOLLIN: No decisions with regard to whether to appeal the Commission's grant of interim operating authority to NOCGSA during the course of this proceeding?

MR. NELSON: No.

MR. TOLLIN: And no decision needed to be made as to amending the agreement?

MR. NELSON: No. My counsel had worked on that.

MR. TOLLIN: No decision needed to be made as to what you were going to do with the expenses that you had been incurring?

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[38] Herbert D. Miller, Jr., was counsel representing USCC in the La Star proceeding.

MR. NELSON: No.

MR. TOLLIN: And how the expenses were going to be dealt with?

MR. NELSON: No.[39]

22. USCC denies that Nelson's testimony misrepresented facts or lacked candor. Specifically, USCC disputes that Nelson's written testimony implies that Nelson was controlled by the Management Committee. Instead, claims USCC, Nelson, in his written statement, characterized his involvement in the La Star Management Committee as only agreeing to what La Star counsel, Arthur Belendiuk, had told him that SJI had proposed to do.[40] In this regard Nelson swore in his written statement:

> My usual contact regarding La Star matters was La Star's counsel, Mr. Belendiuk. Generally, I would receive a telephone call from Mr. Belendiuk and he would advise me of a need for La Star to take some action. Most of the calls involved a proposed course of action to be taken in the La Star litigation, e.g., the need to file an appeal. I understood that he had first spoken to someone at SJI Cellular and that the course of action had already been approved by SJI Cellular.[41]

Nelson stated further that:

> In these circumstances, I did not believe that my approval was necessary, since three members of the Management Committee had already given their approval. I was satisfied being kept informed as to how the prosecution of La Star's application was proceeding, and never objected to any such course of action.[42]

USCC states that because Nelson would get his "marching orders" from La Star's counsel and not the Management Committee itself, there were no misrepresentations in Nelson's testimony.

23. However, Nelson became somewhat evasive when questioned about the basis of his statement that his vote was unnecessary because the SJI members had already approved of an action. The ALJ

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[39] Tr. at 1473-75 (footnote added).

[40] See USCC Reply to the Proposed Findings and Conclusions of NOCGSA, pp. 27-30.

[41] La Star Ex. 15, p.3.

[42] See id., at p.3.

questioned Nelson as follows:

JUDGE CHACHKIN: What do you mean there, in the same paragraph -- now you've stated that the basis of your understanding is your belief that Mr. Belendiuk had spoken to someone from SJI.

Then, you make the statement in the same paragraph, "I did not believe that my approval was necessary, since three members of the Management Committee had already given their approval."

Now, what's the basis for your belief that three members of the Management Committee had given their approval to this course of action, if your only discussion was with Mr. Belendiuk?

MR. NELSON: In our discussion our words would say, "Well, I have talked with the people in Louisiana," and they have three votes, we had two votes, it was their decision.

JUDGE CHACHKIN: Now, wait a minute. Did you -- why didn't you just convene in a formal or an informal meeting of the Management Committee and take up the matter, isn't that what the Management Committee was for?

MR. NELSON: As I've stated, they had three votes, we had two votes --

JUDGE CHACHKIN: There was no voting taken in this matter. You said all that happened was that you -- that Mr. Belendiuk indicated to you that he had spoken to someone -- someone, I say, at SJI Cellular.

Then, the next sentence you say, "Three members of the Management Committee." Now, what's the basis for your statement that three members of the Management Committee had given their approval?

There was no meeting of the Management Committee, informal or formal, so what is the basis for your statement?

MR. NELSON: The communications that Mr. Belendiuk had that they had been -- this was the direction and this was the way they were recommending we go.

JUDGE CHACHKIN: You were a member of the Management Committee, sir. There was no meeting held with the Management Committee on this matter, was there?

MR. NELSON: Which matter?

JUDGE CHACHKIN: The matter you are referring to in this paragraph concerning course of action to be taken with regard to La Star litigation, e.g., the need to file an appeal.

And then you state that you understand that Mr. Belendiuk had spoken to someone at SJI Cellular and the course of action had already been approved by SJI, and then you go on to say, "In these circumstances I did not believe my approval was necessary, since three members of the Management Committee had already given their approval."

Is it your testimony that Mr. Belendiuk told you that a vote had been taken by three members of the Management Committee and they had given their approval, is that your testimony?

MR. NELSON: No.

JUDGE CHACHKIN: In fact, there had not been a meeting of the Management Committee, had there?

MR. NELSON: (No response.)

JUDGE CHACHKIN: My question, sir, is: If there was a Management Committee, and the purpose of the Management Committee was to act on behalf of SJI, why, when you dealt with these matters, did you not convene a meeting of the Management Committee and take a vote on these matters?

MR. NELSON: When we discussed it I was in support of what the direction was.

JUDGE CHACHKIN: That is not my question, sir. My question is: There was a Management Committee, wasn't the Management Committee supposed to take up matters involving SJI, isn't that the purpose of it?

MR. NELSON: (No response.)

JUDGE CHACHKIN: What was the purpose of the Management Committee, if it wasn't to take up matters such as questions whether to appeal or not, what was the purpose of the Management Committee?

MR. NELSON: When it was developed it was to be the Management Committee as the operations of the market.

JUDGE CHACHKIN: Well, then, you're saying that the Management Committee was not of any function prior to the actual grant of the application, is that your testimony?

MR. NELSON: No.

JUDGE CHACHKIN: Well, you just said so. You said it was --

MR. NELSON: No.

JUDGE CHACHKIN: -- developed for the purpose of taking care of the cellular system after it was in the market.

Now I'm asking you, what was the purpose of the Management Committee prior to the grant of an application?

MR. NELSON: There had been time that had gone on, Your Honor.

JUDGE CHACHKIN: Pardon me?

MR. NELSON: There had been quite a bit of time that had gone on, and the original approach of the Management Committee was to build and manage the market. In the intervening activity, these legal activities had occurred, and we were handling the business via telephone.

JUDGE CHACHKIN: My question is, sir: As I am aware of it there was only one informal conference call between the members of the Management Committee. Now, what was the purpose of the Management Committee prior to the time of a grant, did it have any purpose?

MR. NELSON: Yes.

JUDGE CHACHKIN: What was its purpose?

MR. NELSON: To agree on the course of the action for the obtaining of the construction permit.

JUDGE CHACHKIN: Could you tell me why you didn't -- a Management Committee meeting was not convened to determine whether or not you should take an appeal? Did you consider the question of taking an appeal an important action of La Star?

MR. NELSON: If your question is within United States Cellular --

JUDGE CHACHKIN: No, I'm talking about as far as La Star venture is concerned. Was the question of whether you would take an appeal from the Commission's decision, did you consider it to be an important matter?

MR. NELSON: Yes.

JUDGE CHACHKIN: Why wasn't a Management Committee meeting convened on that?

MR. NELSON: We were all in support of the same direction.

JUDGE CHACHKIN: The question is: Why wasn't a Management Committee meeting convened, since that was the purpose of the Management Committee, at which a vote was taken?

MR. NELSON: I don't know, sir.

JUDGE CHACHKIN: So, you have no basis, in fact, for stating that three members of the Management Committee had already given their approval, since you had not discussed this matter with any members of the Management Committee, is that correct?

MR. NELSON: I had not discussed it with the Management Committee, but I had that information from Mr. Belendiuk.

JUDGE CHACHKIN: Mr. Belendiuk told you a meeting of the Management Committee had been held, in which three had voted for this proposition, is that your testimony?

MR. MILLER: Excuse me, Your Honor, that's not his testimony. He does not say that there was a meeting, he said that there were three members of the Management Committee who had --

JUDGE CHACHKIN: Who had already given their approval. Now, did Mr. Belendiuk tell you that three members of the Management Committee had already given their approval?

MR. NELSON: Yes.

JUDGE CHACHKIN: He told that in those words?

MR. NELSON: That's what I recall.

JUDGE CHACHKIN: Did he say what -- when they had given their approval and what manner they given their approval?

MR. NELSON: No, not that I recall.[43]

24. La Star counsel, Mr. Belendiuk, states his involvement in a slightly different manner. Prior to the calling of any witnesses, there was a discussion on the record of whether Mr. Belendiuk would need to be called as a witness. Mr. Belendiuk characterized his involvement as follows:

> MR. BELENDIUK: . . . I -- I've not made any -- I have not made a single decision for La Star other than very minor ones such as requesting motions for extension of time and such like that.
>
> Each significant decision that has -- that has had to be made or any decision as to whether to continue litigation or to file a motion to enlarge or anything along those lines has always been made by consultation with at least one of the principals of the Management Committee.[44]

25. The ALJ upon examining the record, however, stated about Belendiuk's participation that "there is no record evidence of a Management Committee meeting delegating any authority to Belendiuk."[45] The ALJ stated further that "there is no evidence in the record which even suggests that SJI was orchestrating and overseeing counsel's activities, or, for that matter, was even aware of the many activities engaged in by USCC and its employees on behalf of La Star."[46] The ALJ concluded that:

> the evidence suggests that counsel was, throughout the relevant period, more the agent of the ineligible partner, than the agent of SJI. La Star might have a more stronger [sic] agency argument if it had chosen counsel used by SJI for other cellular matters. In sum, it does not follow from the fact that Belendiuk is La Star's counsel that he is SJI's agent or that his actions can be attributed thereto.[47]

26. We affirmed this finding of the administrative law judge. We reached the conclusion that:

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43 Tr. at 1379-86.

44 Tr. at 755.

45 La Star I.D., 6 FCC Rcd at 6887.

46 Id.

47 Id.

> [SJI claims that it] unilaterally controlled La Star by means of instructions to USCC that were conveyed to USCC by attorney Belendiuk. The record does not, however, support this claim. . . . La Star fails to cite any evidence -- beyond generalized, self-serving claims -- to support the contention that SJI supervised Belendiuk. Rather, the documentary evidence and the specific testimony of the witnesses describes circumstances in which, to all appearances, Belendiuk was USCC's attorney and USCC supervised the prosecution of the application.[48]

Therefore, record evidence contradicts Nelson's written direct testimony that he relied on what Belendiuk had told him with regard to courses of action that had already been approved by SJI Cellular through the Management Committee.[49]

27. We have examined the allegations against USCC in light of the standards for designating a hearing issue. See Astroline Communications Limited Partnership v. FCC, 857 F.2d 1556, 1561-62 (D.C. Cir. 1988); 47 U.S.C. §§ 309(d), 309(e). When we examine the record we find that there is a substantial and material question of fact as to whether Nelson engaged in misrepresentation and was not fully forthright and candid in his testimony about the Management Committee.

28. As shown above, Nelson's written testimony refers to the control exercised by the La Star Management Committee. For instance, Nelson's direct case exhibit states that he had "always acted on the belief that La Star's Management Committee is controlled by the three members appointed by SJI Cellular. [And that he was] not aware of a single instance where that had not been the case."[50] But also as shown above, the Management Committee served little purpose. From the time that USCC acquired its interest in La Star, the Management Committee only met once. The Management Committee did not discuss the October 1987 amendment filed by USCC to La Star's application, did not discuss the application for interim operation, did not discuss whether to

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[48] La Star Reconsideration Order, 7 FCC Rcd at 3765.

[49] Additionally, Potosi Company, in its Opposition to USCC's Petition to Delete or Nullify the Effect of Footnote Three, proffers evidence which contradicts Belendiuk's role as depicted by Nelson. Potosi offers affidavits from its principals who dealt with Nelson and Belendiuk over a proposed 39 dBu contour extension in La Star's application for interim authority. The discussions culminated, according to Potosi, with Belendiuk stating that he would have to call Nelson (as opposed to the three SJI members) for a decision.

[50] La Star Ex. 15, p.2.

appeal the grant of interim authority to NOCGSA, did not discuss the amendments made to the Joint Venture Agreement, and did not discuss the expenses being incurred by USCC.[51] Nonetheless, Nelson's written testimony makes several references to the control exercised by the Management Committee over La Star's operations, and Nelson told the ALJ that the Management Committee's purpose was "[t]o agree on the course of the action for obtaining a construction permit."[52]

29. Moreover, Nelson's written testimony that he would confer with SJI "when a particular issue facing the venture required a joint effort to resolve" and citing an example of such an instance,[53] gives the distinct impression that Nelson had conferred with the SJI members of the Management Committee more than once. The facts, as noted above, do not support this inference.

30. Based on the above, we believe a question exists as to whether Nelson was fully candid and truthful on the functioning of the Management Committee. Nelson's testimony does not disclose that the Management Committee only met once and that there were never any votes taken. Accordingly, we believe a question exists as to whether Nelson was attempting to mislead the Commission as to the functions of the Management Committee.

31. USCC's explanation of Nelson's testimony does not suffice to resolve the question. We do not agree with USCC's claims that Nelson's testimony only stands for the proposition that Nelson received all of his "marching orders" from Mr. Belendiuk. This evidence weighed against Belendiuk's exchange on the record raises a material and substantial question of fact as to Nelson's veracity. For instance, Mr. Belendiuk stated that he always consulted "with at least one of the principals of the Management Committee."[54] This calls into question Nelson's testimony that Mr. Belendiuk always spoke to the three SJI members before consulting with Nelson at USCC.[55]

32. Therefore, we believe that a substantial and material question of fact exists as to whether Nelson's testimony about his dealings with La Star counsel, Mr. Belendiuk, was fully candid or truthful. There does not appear to be any record evidence to support Nelson's understanding that Belendiuk had obtained prior

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[51] Tr. at 1473-75.

[52] Tr. at 1384.

[53] La Star Ex. 15, pp. 3-4.

[54] Tr. at 755.

[55] Tr. at 1386.

approval from SJI Management Committee members. Whereas Nelson testified that Belendiuk told him that he (Belendiuk) obtained the votes of the SJI members before calling him (Nelson), if Nelson was aware that Mr. Belendiuk did not always speak with the three SJI Management Committee members, his testimony is untruthful. There is contradictory evidence in the record on this matter. Nelson's testimony itself is contradictory; on the one hand, Nelson stated that Mr. Belendiuk did not tell him (Nelson) that a vote had been taken of the SJI members on any issue.[56] In the same colloquy, however, he stated that Mr. Belendiuk had told him that the three SJI members voted on whatever issue was at hand.[57] This latter testimony cannot be reconciled with Mr. Belendiuk's statement that he always spoke with at least one member of the Management Committee.

33. There are apparent contradictions in the record itself. We therefore cannot resolve the issue of whether Nelson's testimony was fully truthful and candid. We believe that a substantial and material question of fact exists as to USCC's character in the La Star proceeding. Nelson and USCC had every incentive to suggest that USCC was not in control; thus, there is a strong reason to believe that any inconsistencies and misstatements by Nelson were intentional. If USCC misrepresented facts or lacked candor, this calls into question USCC's, and its parent TDS's, qualifications to be Commission licensees. Accordingly, appropriate issues are designated herein. Furthermore, because we have determined that a substantial and material question of fact exists whether TDS is qualified to be a Commission licensee, we are setting aside the grant issued to TDS in the Wisconsin 8 RSA. We note that TDS has commenced service in this market, and to preserve continuity of this service, we will allow TDS to continue operating on an interim basis.[58] See La Star Cellular Telephone Co., 4 FCC Rcd 3777 (1989), aff'd sub nom., La Star Cellular Telephone Co. v. FCC, 899 F.2d 1233 (D.C. Cir. 1990); 47 C.F.R. 22.32(g).

34. NOCGSA, as well as other parties commenting on USCC's[59] Petition to Delete or Nullify the Effect of Footnote Three, allege that no further proceedings are necessary because the misrepresentations and lack of candor were made on the record and that the Commission need only use the record to make a

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[56] Tr. at 1381-82.

[57] Tr. at 1385-86.

[58] TDS shall be permitted to continue operating on an interim basis until the question of its qualifications is resolved.

[59] Potosi Company in its Opposition to USCC's Petition, does state that it believes that a qualifications hearing appears to be unavoidable. See Potosi Company's Opposition to Petition at 2.

determination of wrongdoing by USCC. We do not agree. Because it is not clear from the record that USCC necessarily engaged in misrepresentation or lack of candor, we believe a further hearing on this issue is appropriate.[60] Therefore, we cannot make a determination that USCC made intentional misrepresentations based on only the existing record now before us.[61]

35. Additionally, although we only discuss Nelson's testimony about the functions of the La Star Management Committee herein, we will not limit the trier of fact to examine this issue only. We outline that subject only as an example of substantial and material questions of fact which exist as to whether USCC lacked candor or misrepresented facts to the Commission. We believe that the presiding administrative law judge should be given authority to examine all of USCC's conduct during the La Star proceeding and not be limited to the single instance described here.

36. Because we herein decide that a substantial and material question of fact exists as to USCC's character in the La Star proceeding, we deny USCC's Petition to Delete or Nullify the Effect of Footnote Three.

37. Section 503(b)(6)(B) of the Communications Act of 1934 prohibits us from imposing a forfeiture penalty on common carriers for violations occurring more than one year prior to the issuance of the notice of apparent liability. Nelson's written direct statement was submitted to the Commission on September 18, 1990, Nelson testified orally on January 24, 1991, and other USCC officials also testified more than one year ago. Therefore, we are prohibited from imposing a forfeiture penalty on USCC if its statements made prior to and at the hearing were not candid or truthful. However, if it is determined that USCC lacked candor or misrepresented facts in its subsequent pleadings filed within a year of this Order, e.g., the Petition to Delete or Nullify the Effect of Footnote Three, the presiding ALJ could determine that USCC or TDS has violated Section 1.17 of the Commission's Rules and impose forfeiture up to the statutory maximum.

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[60] Compare RKO General, Inc. v. FCC, 670 F.2d at 235 (Disqualification for lack of candor during hearing upheld although no separately designated issue where, inter alia, the conduct "is of such a blatant and unacceptable dimension that its existence cannot be denied.")

[61] We note that the Bureau has been conditioning all grants to TDS, or any of its subsidiaries, of licenses for new facilities, modification of facilities, and consent to acquire licensed facilities by assignment or transfer upon to the final resolution of the issues mentioned in footnote 3. Any further grants to these entities will also be conditioned on the outcome of this proceeding.

38. We believe that because NOCGSA was a party to the La Star proceeding and possesses knowledge of the facts and circumstances of the La Star proceeding, NOCGSA should be made a party to the instant proceeding. We believe that NOCGSA's knowledge of the La Star proceedings will further the adduction of evidence in this proceeding. We note further that NOCGSA, through its sister company, Louisiana CGSA, Inc., has continued to assert its rights in seeking a resolution of the character issues by filing a response to USCC's Petition to Delete or Nullify the Effect of Footnote Three. The settling partners, as petitioners in this proceeding, will also be made parties. We recognize that various other parties have raised footnote three issues against either USCC or TDS in other proceedings. Any of those other parties which have pending petitions alleging these character issues may file a petition to intervene in this proceeding pursuant to Section 1.223 of the Commission's Rules.

III. ORDERING CLAUSES

39. Accordingly, IT IS ORDERED that the Application for Review filed by Century Cellunet, Inc., et al. IS HEREBY DENIED to the extent indicated herein.

40. IT IS FURTHER ORDERED that the Contingent Application for Review filed by Telephone and Data Systems, Inc., IS HEREBY GRANTED to the extent indicated herein.

41. IT IS FURTHER ORDERED that the grant of the Block B cellular authorization to Telephone and Data Systems, Inc. in the Wisconsin 8 Rural Service Area IS SET ASIDE.

42. IT IS FURTHER ORDERED that INTERIM AUTHORITY IS GRANTED to Telephone and Data Systems, Inc. to continue operating in the Wisconsin 8 Rural Service Area.

43. IT IS FURTHER ORDERED that the Petition to Delete or Nullify the Effect of Footnote Three filed by the United States Cellular Corporation IS HEREBY DENIED.

44. IT IS FURTHER ORDERED that pursuant to Section 309 of the Communications Act of 1934, 47 U.S.C. § 309, the captioned application IS DESIGNATED FOR HEARING on the following issues:

(1) To determine whether United States Cellular Corporation misrepresented facts to the Commission, lacked candor in its dealings with the Commission, or attempted to mislead the Commission, and, in this regard, whether United States Cellular Corporation has violated Section 1.17 of the Commission's Rules, 47 C.F.R. § 1.17.

(2) To determine, based on the evidence adduced in issue

1, above, whether Telephone and Data Systems, Inc. possesses the requisite character qualifications to hold the cellular Block B authorization for the Wisconsin 8 (Vernon) Rural Service Area and, accordingly, whether grant of its application would serve the public interest, convenience, and necessity.

45. IT IS FURTHER ORDERED that the hearing shall be held at a time and place and before an Administrative Law Judge to be specified in a subsequent Order.

46. IT IS FURTHER ORDERED that Century Cellunet, Inc., et al., Telephone and Data Systems, Inc., United States Cellular Corporation, New Orleans CGSA, Inc., and the Chief, Common Carrier Bureau, are made parties to this proceeding. The applicants and parties may avail themselves of an opportunity to be heard by filing written notices of appearance under Section 1.221 of the Commission's Rules, 47 C.F.R. § 1.221, within 20 days of the mailing of this Order by the Secretary of the Commission. The notice and other expedited procedures of Section 1.822(b) of the Commission's Rules, 47 C.F.R. § 1.822(b), shall not apply in this case.

47. IT IS FURTHER ORDERED, pursuant to Section 309(e) of the Communications Act of 1934, 47 U.S.C. § 309(e), that the burden of proceeding with the introduction of evidence and the burden of proof shall be upon Telephone and Data Systems, Inc. and United States Cellular Corporation. We are so assigning the burdens of going forward with the evidence and proof because Telephone and Data Systems, Inc. and United States Cellular Corporation have the particular knowledge of the specific events at issue in this proceeding.

48. IT IS FURTHER ORDERED that it shall be determined, pursuant to Section 503(b)(3) of the Communications Act of 1934, 47 U.S.C. § 503(b)(3), and Section 1.80(g) of the Commission's Rules, 47 C.F.R. § 1.80(g), whether an ORDER OF FORFEITURE shall be issued against either United States Cellular Corporation or Telephone and Data Systems, Inc., in an amount not exceeding the statutory maximum for violations of Section 1.17 of the Commission's Rules, 47 C.F.R. § 1.17.

49. IT IS FURTHER ORDERED that in connection with the possible forfeiture liability noted above, this document constitutes notice pursuant to Section 503(b)(3) of the Communications Act of 1934, 47 U.S.C. § 503(b)(3). The Commission has determined that, in every case designated for hearing involving denial of an application for alleged violations which also come within the purview of Section 503(b) of the Communications Act, 47 U.S.C. § 503(b), it shall, as a matter of course, include this forfeiture notice so as to maintain the fullest possible flexibility of action. Accordingly, we stress that the inclusion

of this notice is not to be taken as in any way indicating what the initial or final disposition of this case should be.

50. The Secretary shall cause a summary of this Order to be published in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

William F. Caton
Acting Secretary

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